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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके
Separate paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)

Part II—Sec. 3—Sub-sec. (iii)

(संघ राज्यक्षेत्र प्रशासनों को छोड़कर) केंद्रीय प्राधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than Administrations of Union Territories)

भारत निर्वाचन आयोग

आदेश

नई दिल्ली, 28 फरवरी, 1981

आ० अ० 686—यहां निर्वाचन आयोग का समाधान हो गया है कि मई, 1980 में हुए बिहार विधान सभा के लिए साधारण निर्वाचन के लिए 236-नवीनगर निर्वाचन क्षेत्र के चुनाव लड़ने वाले उम्मीदवार श्री युगल सिंह, ग्राम मोनपुरा, टोता महीप ब्रिगहा, पो० नवीनगर, जिला औरंगाबाद (बिहार) लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्धीन बनाए गए नियमों द्वारा अपेक्षित अपने निर्वाचन व्यय का कोई भी लेखा दाखिल करने में असफल रहे है,

और, यत, उक्त उम्मीदवार ने, उसे सम्यक सूचना दिए जाने पर भी अपनी उस असफलता के लिए कोई कारण अथवा स्पष्टीकरण नहीं दिया है, निर्वाचन आयोग का यह भी समाधान हो गया है कि उनके पास इस असफलता के लिए कोई पर्याप्त कारण या व्याख्यान नहीं है,

अतः अत्र, उक्त अधिनियम की धारा 10-क के अनुसरण में निर्वाचन आयोग एन० द्वारा उक्त श्री युगल सिंह को संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है

[सं० बिहार-वि० सं०/236/80(18)]

ELECTION COMMISSION OF INDIA

ORDER

New Delhi, the 28th February, 1981

O.N 686.—Whereas the Election Commission is satisfied that Shri Yugal Singh, Village Sonpura, Tota Mahip Bigha, P.O. Nabinagar, District Aurangabad, a contesting candidate for general election to the Legislative Assembly held in May, 1980 from 236-Nabinagar constituency, has failed to lodge an account of his election expenses at all as required by the Representation of the People Act, 1951, and the Rules made thereunder ;

And whereas the said candidate, even after due notice, has not given any reason or explanation for the failure and the Election Commission is satisfied that he has no good reason or justification for the failure ;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Yugal Singh to be disqualified for being chosen as, and for being a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[No. BR-LA/236/80(18)]

नई दिल्ली, 18 मार्च, 1981

आ० अ० 687:—यतः, निर्वाचन आयोग का समाधान हो गया है कि मई, 1980 में हुए बिहार विधान सभा के लिए साधारण निर्वाचन के लिए 277-गोमिया निर्वाचन क्षेत्र से चुनाव लड़ने वाले उम्मीदवार श्री नरेंद्र कुमार, ग्राम ब पो० ओरदाना, जिला गिरिडीह, बिहार लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्धीन बनाए गए नियमों द्वारा अपेक्षित अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे हैं;

और यतः, उक्त उम्मीदवार ने, सम्यक सूचना दिए जाने पर भी, इस असफलता के लिए कोई कारण प्रस्ताव स्पष्टीकरण नहीं दिया है और निर्वाचन आयोग का यह समाधान हो गया है कि उसके पास इस असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है;

अतः अब, उक्त अधिनियम की धारा 10-क के अनुसरण में निर्वाचन आयोग एतद्द्वारा उक्त श्री नरेंद्र कुमार को संसद् के किसी भी सदन के या किसी राज्य की विधान सभा प्रथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है

[सं० बिहार-वि० नं० 277/80(28)]

New Delhi, the 18th March, 1981

O.N. 687.—Whereas the Election Commission is satisfied that Shri Narendra Kumar, Village and P.O. Ordana, District Giridih, Bihar a contesting candidate for general election to the Bihar Legislative Assembly from 277-Gomia Assembly constituency, held in May, 1980, has failed to lodge an account of his election expenses as required by the Representation of the People Act, 1951, and the Rules made thereunder;

And whereas the said candidate, even after due notice, has not given any reason or explanation for the failure and the Election Commission is further satisfied that he has no good reason or justification for such failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Narendra Kumar, to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[No. BR-LA/277/80(28)]

आ० अ० 688:—यतः, निर्वाचन आयोग का समाधान हो गया है कि मई, 1980 में हुए बिहार विधान सभा के लिए साधारण निर्वाचन के लिए 277-गोमिया निर्वाचन क्षेत्र से चुनाव लड़ने वाले उम्मीदवार श्री सो० उसमान, ग्राम ब पो० स्वांग, जिला गिरिडीह, बिहार लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्धीन बनाए गए नियमों द्वारा अपेक्षित अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे हैं;

और यतः, उक्त उम्मीदवार ने, सम्यक सूचना दिए जाने पर भी, इस असफलता के लिए कोई कारण प्रस्ताव स्पष्टीकरण नहीं दिया है और निर्वाचन आयोग का यह समाधान हो गया है कि उसके पास इस असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है;

अतः अब, उक्त अधिनियम की धारा 10-क के अनुसरण में निर्वाचन आयोग एतद्द्वारा उक्त श्री सो० उसमान को संसद् के किसी भी सदन के या किसी राज्य की विधान सभा प्रथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है।

[सं० बिहार-वि० नं० 277/80(29)]

आवेश से

एस० सी० जैन, अवर सचिव
भारत निर्वाचन आयोग

O.N. 688.—Whereas the Election Commission is satisfied that Shri Md. Usman, Village and P.O. Swang, District Giridih, Bihar a contesting candidate for general election to the Bihar Legislative Assembly from 277-Gomia Assembly constituency, held in May, 1980, has failed to lodge an account of his election expenses as required by the Representation of the People Act, 1951, and the Rules made thereunder;

And whereas the said candidate, even after due notice, has not given any reason or explanation for the failure and the Election Commission is further satisfied that he has no reason or justification for such failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Md. Usman, to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[No. BR-LA/277/80(29)]

By Order,

S. C. JAIN, Under Secy.
Election Commission of India.

आवेश

नई दिल्ली, 20 मई, 1981

आ० अ० 689:—यतः, निर्वाचन आयोग का समाधान हो गया है कि मई, 1980 में हुए मध्य प्रदेश विधान सभा के लिए साधारण निर्वाचन के लिए 168-डोंडिलोहारा निर्वाचन क्षेत्र से चुनाव लड़ने वाले उम्मीदवार श्रीमति रमवसिया बाई, मूकाम ब पोस्ट रेंगाडबरी, तहसील बालोब, जिला दूर्ग, (मध्य प्रदेश) लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्धीन बनाए गए नियमों द्वारा अपेक्षित अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे हैं;

और यतः, उक्त उम्मीदवार ने, सम्यक सूचना दिए जाने पर भी, इस असफलता के लिए कोई कारण प्रस्ताव स्पष्टीकरण नहीं दिया है और निर्वाचन आयोग का समाधान हो गया है कि उसके पास इस असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है;

अतः अब, उक्त अधिनियम की धारा 10-क के अनुसरण में निर्वाचन आयोग एतद्द्वारा उक्त श्रीमती रमवसिया बाई को संसद् के किसी भी सदन के या किसी राज्य की विधान सभा प्रथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है।

[सं० म०प्र०-वि० नं० 168/80(76)]

ORDERS

New Delhi, the 20th May, 1981

O.N. 689.—Whereas the Election Commission is satisfied that Shrimati Ramdasia Bai, Village and Post Rangadabri, Tehsil : Balod, District Durg (Madhya Pradesh) a contesting candidate for general election to the Madhya Pradesh Legislative Assembly held in May, 1980 from 168-Dondilohara constituency, has failed to lodge any account of his election expenses as required by the Representation of the People Act, 1951, and the Rules made thereunder;

And whereas the said candidate, even after due notice, has not given any reason or explanation for the failure and the Election Commission is satisfied that he has no good reason or justification for the failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shrimati Ramdasia Bai to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[No. MP-LA/168/80(76)]

आ० अ० 690 :—यतः, निर्वाचन आयोग का समाधान हो गया है कि मई, 1980 में हुए मध्य प्रदेश विधान सभा के लिए साधारण निर्वाचन के लिए 168-डोडी लोहागा निर्वाचन क्षेत्र से चुनाव लड़ने वाले उम्मीदवार श्री मखन लाल मंडावी, एवेन्यू-ए-180, दल्लिराजहारा, तहसील बालोद, जिला दुर्ग (मध्य प्रदेश) लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्वर्धन बनाए गए नियमों द्वारा अपेक्षित अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे हैं;

और यतः, उक्त उम्मीदवार ने, सम्यक सूचना दिए जाने पर भी, इस असफलता के लिए कोई कारण अथवा स्पष्टीकरण नहीं दिया है और निर्वाचन आयोग का समाधान हो गया है कि उसके पास इस असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है;

अतः अब, उक्त अधिनियम की धारा 10-क के अनुसरण में निर्वाचन आयोग एतद्द्वारा उक्त श्री मखन लाल मंडावी, का संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद के सदस्य चुने जाने और होने के लिए इस प्रदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है।

[सं० म० प्र०-वि० सं० 168/80/(77)]

O.N. 690.—Whereas the Election Commission is satisfied that Shri Lakhanlal Mandavi, Avenue A-180 Dallirajhara, Tehsil : Balod, District : Durg (Madhya Pradesh) a contesting candidate for general election to the Madhya Pradesh Legislative Assembly held in May, 1980 from 168-Doundilohara constituency, has failed to lodge an account of his election expenses as required by the Representation of the People Act, 1951, and the Rules made thereunder ;

And whereas the said candidate, even after due notice, has not given any reason or explanation for the failure and the Election Commission is satisfied that he has no good reason or justification for the failure ;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Lakhanlal Mandavi to be disqualified for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[No. MP-LA|168|80(77)]

आ० अ० 691 :—यतः, निर्वाचन आयोग का समाधान हो गया है कि मई, 1980 में हुए मध्य प्रदेश विधान सभा के लिए साधारण निर्वाचन के लिए 165-गुन्डरदेही निर्वाचन क्षेत्र से चुनाव लड़ने वाले उम्मीदवार श्री कन्हैयालाल, मुकाम ब पोस्ट जामगाँव (आर) जिला दुर्ग (मध्य प्रदेश) लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्वर्धन बनाए गए नियमों द्वारा अपेक्षित अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे हैं ;

और यतः, उक्त उम्मीदवार ने, सम्यक सूचना दिए जाने पर भी, इस असफलता के लिए कोई कारण अथवा स्पष्टीकरण नहीं दिया है और निर्वाचन आयोग का समाधान हो गया है कि उसके पास इस असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है;

अतः अब, उक्त अधिनियम की धारा 10-क के अनुसरण में निर्वाचन आयोग एतद्द्वारा उक्त श्री कन्हैयालाल को संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद के सदस्य चुने जाने और होने के लिए इस प्रदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है।

[सं० म० प्र०-वि० सं० 165/80/(78)]

O.N. 691.—Whereas the Election Commission is satisfied that Shri Kanhiyalal, Mukam Post Jangaon (R) District : Durg (Madhya Pradesh) a contesting candidate for general election to the Madhya Pradesh Legislative Assembly held in May, 1980 from 165-Gunderdehi constituency, has

failed to lodge any account of his election expenses as required by the Representation of the People Act, 1951, and the Rules made thereunder ;

And whereas the said candidate, even after due notice, has not given any reason or explanation for the failure and the Election Commission is satisfied that he has no good reason or justification for the failure ;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Kanhiyalal to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[MP-LA|165|80(78)]

आ० अ० 692 :—यतः, निर्वाचन आयोग का समाधान हो गया है कि मई, 1980 में हुए मध्य प्रदेश विधान सभा के लिए साधारण निर्वाचन के लिए 204-विजयराघवागढ़ निर्वाचन-क्षेत्र से चुनाव लड़ने वाले उम्मीदवार श्री राम औतार, पो० ओल्ड टी०आर०टी०ए०सी०सी०, कैमोर (मध्य प्रदेश) लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्वर्धन बनाए गए नियमों द्वारा अपेक्षित अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे हैं;

और यतः, उक्त उम्मीदवार ने, सम्यक सूचना दिए जाने पर भी, इस असफलता के लिए कोई कारण अथवा स्पष्टीकरण नहीं दिया है और निर्वाचन आयोग का समाधान हो गया है कि उसके पास इस असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है;

अतः अब, उक्त अधिनियम की धारा 10-क के अनुसरण में निर्वाचन आयोग एतद्द्वारा उक्त श्री राम औतार, को संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद के सदस्य चुने जाने और होने के लिए इस प्रदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है।

[सं० म० प्र०-वि० सं० 204/80/(79)]

O.N. 692.—Whereas the Election Commission is satisfied that Shri Ram Autar, Post Old T.R.T. A.C.C. Cammor (Madhya Pradesh) a contesting candidate for general election to the Madhya Pradesh Legislative Assembly held in May, 1980 from 204-Vijayaraghaoghar constituency, has failed to lodge any account of his election expenses as required by the Representation of the People Act, 1951, and the Rules made thereunder ;

And whereas the said candidate, even after due notice, has not given any reason or explanation for the failure and the Election Commission is satisfied that he has no good reason or justification for the failure ;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Ram Autar to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[No. MP-LA|204|80(79)]

मई दिल्ली, 25 मई, 1981

आ० अ० 693 :—यतः, निर्वाचन आयोग का समाधान हो गया है कि मई, 1980 में हुए राजस्थान विधान सभा के लिए साधारण निर्वाचन के लिए 184-सरदारपुरा निर्वाचन क्षेत्र से चुनाव लड़ने वाले उम्मीदवार श्री समत राज चाँची, पावटा की-रोड, जोधपुर, जिला जोधपुर (राजस्थान) लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्वर्धन बनाए गए नियमों द्वारा अपेक्षित अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे हैं;

और यह, उक्त उम्मीदवार ने, सम्यक सूचना दिए जाने पर भी, इस असफलता के लिए कोई कारण प्रस्तुत नहीं किया है और निर्वाचन आयोग का समाधान हो गया है कि उसके पास इस असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है;

अतः अब, उक्त अधिनियम की धारा 10-क के अनुसरण में निर्वाचन आयोग एतद्वारा उक्त श्री सम्पत राज घांची को संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है।

[सं० राज-वि० सं०/184/80(74)]

New Delhi, the 25th May, 1981

O.N. 693.—Whereas the Election Commission is satisfied that Shri Sampat Raj Ghanchi, Pawta, B-Road, Jodhpur, District : Jodhpur (Rajasthan) a contesting candidate for general election to the Rajasthan Legislative Assembly held in May, 1980 from 184-Sardarpura constituency, has failed to lodge any account of his election expenses as required by the Representation of the People Act, 1951, and the Rules made thereunder ;

And whereas the said candidate, even after due notice, has not given any reason or explanation for the failure and the Election Commission is satisfied that he has no good reason or justification for the failure ;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Sampat Raj Ghanchi to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[No. RJ-LA/184/80(74)]

आ० अ० 694 .—यतः, निर्वाचन आयोग का समाधान हो गया है कि मई, 1980 में हुए राजस्थान विधान सभा के लिए साधारण निर्वाचन के लिए 184-सर्दारपुरा निर्वाचन क्षेत्र से चुनाव लड़ने वाले उम्मीदवार श्री तुलसी राम, नागरी बरा, मण्डौर, जोधपुर जिला जोधपुर (राजस्थान) लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्दीन बनाए गए नियमों द्वारा अपेक्षित अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे हैं;

और यह, उक्त उम्मीदवार ने, सम्यक सूचना दिए जाने पर भी, इस असफलता के लिए कोई कारण प्रस्तुत नहीं किया है और निर्वाचन आयोग का समाधान हो गया है कि उसके पास इस असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है;

अतः अब, उक्त अधिनियम की धारा 10-क के अनुसरण में निर्वाचन आयोग एतद्वारा उक्त श्री तुलसी राम को संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है।

[सं० राजस्थान वि० सं०/184/80(75)]

O.N. 694.—Whereas the Election Commission is satisfied that Shri Tulchhi Ram, Nagori Bera, Mendre, Jodhpur, District Jodhpur (Rajasthan) a contesting candidates for general election to the Rajasthan Legislative Assembly held in May, 1980 from 184-Sardarpura constituency, has failed to lodge any account of his election expenses as required by the Representation of the People Act, 1951, and the Rules made thereunder ;

And whereas the said candidate, even after due notice, has not given any reason or explanation for the failure and the Election Commission is satisfied that he has no good reason or justification for the failure ;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Tulchhi Ram to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[No. RJ-LA/184/80(75)]

नई दिल्ली, 28 मई, 1981

आ० अ० 695 .—यतः निर्वाचन आयोग का समाधान हो गया है कि मई, 1980 में हुए गुजरात विधान सभा के लिए साधारण निर्वाचन के लिए 165-महुवा (अ० ज० जा०) निर्वाचन क्षेत्र में चुनाव लड़ने वाले उम्मीदवार श्री धोदिया छोटुभाई प्रभुभाई वनसकुई, तालुका महुवा, जिला सुरत (गुजरात) लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्दीन बनाए गए नियमों द्वारा अपेक्षित अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे हैं;

और यह, उक्त उम्मीदवार ने, सम्यक सूचना दिए जाने पर भी, इस असफलता के लिए कोई कारण प्रस्तुत नहीं किया है और निर्वाचन आयोग का समाधान हो गया है कि उसके पास इस असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है;

अतः अब, उक्त अधिनियम की धारा 10क के अनुसरण में निर्वाचन आयोग एतद्वारा उक्त श्री धोदिया छोटुभाई प्रभुभाई को संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है।

[सं० गुज-वि० सं०/165/80(60)]

New Delhi, the 28th May, 1981

O.N. 695.—Whereas the Election Commission is satisfied that Shri Dhodia Chhotubhai Prabhubhai At Post Vanskul, Taluka-Mahuwa, District-Surat (Gujarat) a contesting candidate for general election to the Gujarat Legislative Assembly held in May, 1980 from 165-Mahuwa (ST) Constituency, has failed to lodge an account of his election expenses at all as required by the Representation of the People Act, 1951, and the Rules made thereunder ;

And whereas the said candidate, even after due notice, has not given any reason or explanation for the failure and the Election Commission is satisfied that he has no good reason or justification for the failure ;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Dhodia Chhotubhai Prabhubhai to be disqualified for being chosen as, and for being a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[No. GJ-LA/165/80(60)]

NOTIFICATION

O.N. 696.—In pursuance of Section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes judgement dated 2nd May, 1981 of the High Court of Madhya Pradesh, Jabalpur, in Election Petition No. 2 of 1980.

Election Petition No. 2 of 1980

Shri Narendra Joshi s/o Shri Shankarbhai Joshi aged 44 years, Occupation Industrial Consultant, r/o 27, Gandhi Colony, Jaora, Post Office, Jaora, District Ratlam
Petitioner

—Versus—

1 Shri Bhawarlal s/o Shri Rajmalji Nahata, aged about 55 years, occupation Advocate, r/o Station Road, Mand saur Post Office District Mandsaur

2 Shri Dr Laxminarayan Pandeya s/o Shri Jannulalji Pandeya aged about 52 years, occupation Medical Practitioner, resident of Old Hospital Road, Jaora, P O Jaora, District Ratlam

3 Shri Rampratap s/o Shri Nurbhayaram Dhakad, aged about 38 years, occupation Agriculturist, resident of village 1 Ichgaon Post Ichgaon, Distt Mandsaur

4 Shri Ahmedbhai s/o Shri Nalibux aged about 45 years, occupation business, resident of Gol Choraha, Nai Abadi Post and District Mandsaur

5 Shri Kundanmal s/o Shri Sobhagmal Pamecha aged about 35 years, occupation business, r/o Mhow Neemuch Road, Nai Abadi, Mandsaur, P O and Distt Mandsaur

6 Shri Khushal Singh s/o Shri Modsingh aged about 50 years, occupation Agriculturist, residing at village Matkhedi, Post Mahagaish Tah and Distt Mandsaur

7 Shri Tejram Sharma s/o Shri Onkarji Sharma, aged about 40 years, occupation Agriculturist, residing at village and Post Aned Tah Jawad Distt Mandsaur

8 Shri Dayaram s/o Shri Hirabhai, aged about 45 years, occupation business, residing at Bhowada, Mandsaur Post and District Mandsaur

9 Shri Devendrakumar s/o Shri Ramnarain Harihar, aged about 38 years, occupation business, r/o 78, Jawahar Nigal, Post Neemuch, Distt Mandsaur

10 Shri Rameshchandra s/o Shri Ghanshyam, aged 40 years, occupation business, r/o Khadashei Gali, Manasa, Distt Mandsaur.

11 Shri Ramdayal s/o Shri Dewaji, aged about 40 years, occupation business, r/o Delhi Darwaja Mandsaur, Distt Mandsaur

12 Shri Satyanarain s/o Shri Radhakrishna Purohit aged 32 years, occupation service, resident of Rampura Darwaja, Bhanpura, Distt Mandsaur

13 Shri Surendrakumar s/o Shri Bhanwarlal Nahata, aged 32 years, occupation business, r/o Station Road, Mand saur Distt Mandsaur

14 Shri Harishankar s/o Shri Chhannulalji Pathak, aged 45 years, occupation Services—Collector, Mandsaur and appointed as the Returning Officer, 40, Mandsaur Lok Sabha Constituency, Collectorate, Mandsaur
Respondents

JUDGMENT

This election petition has been filed by an elector Shri Narendra Joshi from Jaora. He seeks to challenge the election of the returned candidate respondent No. 1 Shri Bhawarlal Nahata, from the Mandsaur Lok Sabha Constituency No. 40, in the State of M P, in the general elections held in January, 1980. The said respondent No. 1 Shri Bhawarlal Nahata, contested the said election as a Congress (I) Party candidate. The said election was contested by respondents No. 1 to No. 13 out of whom respondent No. 13 Shri Surendrakumar Nahata, who is the son of respondent No. 1 Shri Bhawarlal Nahata, withdrew his candidate before the due date prescribed for the withdrawal of the nomina-

tion. According to the petitioner respondent No. 13 Shri Surendrakumar Nahata submitted his nomination form as a dummy candidate to the respondent No. 1 Shri Bhawarlal Nahata and after withdrawal of his candidature, respondent No. 1 has appointed respondent No. 13 as his election Agent for the said election, vide Ex D-6 dated 2-1-80.

2 Respondent No. 14 Shri Harishankar Pathak, who was the Collector of the Mandsaur District was appointed as the Returning Officer for the constituency to hold the elections in the said constituency.

3 The polling for the said election in the constituency was held on 3rd January, 1980 and the counting of votes commenced on the 7th January, 1980 and the results were declared late in the same night which were as follows

S No	Name of contesting candidates	Party	No of vote
1	Shri Bhawarlal Nahata	Indian National Congress (I)	2,00,193
2	Dr Laxminarayan Pandeya	Janata Party	1,97,510
3	Shri Rampratap s/o Nurbhayaram	Janata Party (S)	16,452
4	Shri Ahmedbhai Nalibux	Independent	1336
5	Shri Kundanmal S Pamecha		2778
6	Shri Khushalsingh Modsingh		4737
7	Shri Tajram Onkarji	,	4846
8	Shri Dayaram Hiraji		2142
9	Shri Devendrakumar s/o Ramnarain	,	2721
10	Shri Rameshchandra s/o Ghanshyam	..	2573
11	Shri Ramdayal Dewaji	..	12,812
12	Shri Satyanarain Purohit	,	1323

4 After the service of summons of this petition on the respondents, only respondent No. 1 Shri Bhawarlal Nahata, respondent No. 2 Dr Laxminarayan Pande, respondent No. 3 Shri Rampratap Dhakad, respondent No. 8 Shri Dayaram, respondent No. 13 Shri Surendrakumar Nahata and respondent No. 14 Shri Harishankar Pathak has filed their written statements and the other respondents neither filed any written statement nor put in their appearance throughout the proceedings with the result that they were proceeded ex parte. Similarly respondent No. 1 Shri Bhawarlal Nahata examined himself and also adduced evidence of some witnesses. Respondent No. 2 Dr Laxminarayan Pande also gave his own statement, but did not examine any other witness and the other respondents did not lead any evidence at all though respondent No. 14 Shri Harishankar Pathak, the Returning Officer, was examined as a witness (DW 12) by the respondent No. 1.

5 The election of the returned candidate respondent No. 1 Shri Bhawarlal Nahata is challenged mainly on the following grounds.

(1) Non-compliance with the provisions of the Representation of the People Act, 1951 and/or the Rules made thereunder [Para 12 of the petition].

(2) Publication of false statements of facts in relation to the personal character and conduct of Shri Rampratap Dhakad respondent No. 3 and respondent No. 2 Dr Laxminarayan Pande, on the ground of corrupt practices covered by S 123(4) of the Representation of the People Act, 1951 [Paragraphs 13 and 14 of the petition].

(3) Allegations relating to undue influence and under the belief of becoming an object of divine displeasure or spiritual censure and/or appeal for vote on the grounds of religion, caste or community or the religious symbol, corrupt practices under S. 123(2) and (3) of the Representation of the People Act, 1951. [Paragraph 15 of the petition].

(4) Denial of the voting rights to the voters by the Polling Officers at various polling stations of the constituency. [Paragraph 16 of the petition]. Thus, the petitioner has prayed for declaring election of respondent No. 1 Shri Bhawarlal Nahata to be void on the grounds mentioned in S. 100(1)(b) and (d) of the Representation of the People Act, 1951 (hereinafter referred to as the Act) and has also prayed for recounting of the votes and the appropriate consequential result arising therefrom.

6. According to the petitioner, during the counting of the votes polled in the Constituency, 10,709 ballot papers were rejected without any proper reason, cause or ground, that out of the said rejected ballot papers about 4000 to 5000 ballot papers were completely in order and were polled in favour of respondent No. 2 Dr. Laxminarayan Pande. Further according to the petitioner if the said valid votes out of those rejected votes are added to the number of votes declared to have been polled by respondent No. 2 Dr. Laxminarayan Pande, the result of the election would have been changed.

Besides the Returning Officer, respondent No. 14 did not take into consideration nor counted the votes polled at Polling Station No. 14 Prathamik Shala Bhawan, Chaplana, situated in Sitamau Vidhan Sabha Constituency No. 317 and without giving any speaking order or direction about non-counting of the said votes, straight way declared the results of the Constituency. Further according to the petitioner, the Returning Officer also failed to prepare the result sheet in the Form 20 as contemplated under Rule 56(7) of the Conduct of Election Rules, 1961 with the result that the said Returning Officer Shri Harishankar Pathak respondent No. 14 did not give an opportunity to make a request for the recount of votes under Rule 63 of the said Conduct of Election Rules, 1961. Further during the counting of votes the Returning Officer kept the candidates and their Counting Agents in suspense when a complaint was lodged that the ballot boxes at the said Chaplana Polling Station were found tampered with as the seal thereon was not found in tact, due to which as a result of the hasty declaration of the results of the election without complying with the provisions of S. 58 of the said Act the candidates and their Counting Agents were deprived of the opportunity to apply for counting of votes as provided in Rules 63 and 64 of the said Conduct of Election Rules.

Thus, according to the petitioner the said Chaplana ballot boxes were allowed to be tampered with even though they were kept under due care and custody of the Returning Officer thereby materially affecting the result of the election which speaks of the mala fide intentions.

7. That at Polling Station No. 11, Prathamik Shala Bhawan, Malaheda, situated in 314-Manasa Assembly Constituency in all 673 votes, were polled on 3-1-80 but at the time of counting on 7-1-80 at Mandsaur when the said ballot boxes were opened only 623 votes were found therein with the result that 50 votes polled were found missing from the said ballot boxes. According to the petitioner this shortage of 50 votes found missing from those ballot boxes clearly indicate that along with other ballot boxes these ballot boxes were also tampered with to the detriment of the interest of the electors so as to materially affect the result of the election of the Constituency. That even though a complaint to this effect was made by P. W. 38 Pradeep Pandit and P. W. 41 Ramchandra Basci, the Counting Agents, to the Returning Officer, he did not take any action nor make any enquiry.

8. That on the polling day i.e. 3-1-80 respondent No. 1 Shri B. L. Nahata came to the Polling Station No. 61 Jain Panchavati Nohara Jaora, at about 3.30 p.m. in a car number MPO 995 where on the election symbols of 'Hand' and election posters vote for Congress (I), were displayed and within the prohibited area of 200 yards from the polling station respondent No. 1 Shri Bhawarlal Nahata was allowed

to make election propaganda in or near about the said polling station for about half an hour, contrary to the Rules and despite complaint made immediately to the Polling Officer and the police authorities at Jaora no action was taken.

In a similar fashion on the same day and in the same car, earlier at 3 p.m. respondent No. 1 also repeated the said performance within the prohibited area of polling station No. 65 and No. 66 Mahatma Gandhi Balak Uchchattar Madhyamik Vidyalaya, Jaora, about which also a report was made to the concerned Polling Officer.

9. That Bharat Singh (D.W. 15) an Agent of respondent No. 1 and President of Yuvak Congress, District Ratlam, with the consent and connivance of respondent No. 1 and/or his Election Agent respondent No. 13 Shri Surendrakumar Nahata used jeep No. MPO 1926 in villages Ringnod and Rola failing under Polling Station Nos. 34 and 16 respectively of 312 Jaora Vidhan Sabha Constituency for the purpose of election propaganda of respondent No. 1 Shri Bhawarlal Nahata about which a report Ex. P-9 was made at police station Ringnod by Shri Baghmaj Shimal (P.W. 26).

10. That on 3-1-80 at polling station No. 28 Madhyamik Shala Bhawan, Alhed, situated in 314 Manasa Assembly Constituency the Polling Officer continued polling after 4 p.m. and allowed the voters to enter the polling area even after 4 p.m. till 8 p.m. and the Polling Officer at that time refused to accept the complaint of Shivram Gujar, who was turned out of the polling station and none was allowed to remain present inside the polling station at the time of sealing the ballot boxes and thus denied and deprived that opportunity to the Agent of respondent No. 2.

11. That Manaklal Kochatta (D.W. 7), Vice President of the Indian National Congress (I) District Committee, Ratlam, was appointed and declared by respondent No. 1 Shri Bhawarlal Nahata as his Election Organiser (Chunav Sanchalak) for the area comprised in 312 Jaora Vidhansabha Constituency after submission of nomination form by respondent No. 1 or about 11-12-1979; that the said Manaklal Kochatta organised the entire election affairs of respondent No. 1 and 312 Jaora Vidhansabha Constituency with the consent and connivance of respondent No. 1 or his Election Agent respondent No. 13; that Shri Manaklal Kochatta was also appointed counting agent of respondent No. 1 during counting of the votes at Ratlam; that during the election propaganda, with the consent of respondent No. 1 or his election agent respondent No. 13, the said Manaklal Kochatta made statement of facts which are false and which he or respondent No. 1 or his Election Agent respondent No. 13 either believed to be false or did not believe to be true in relation to the personal character or the conduct of respondent No. 3 Shri Rampratap Dhakad and made such statements, mentioned below, being reasonably calculated to prejudice the prospects of election of respondent No. 3 Shri Rampratap Dhakad :

(1) On 24-12-1979 Shri Manaklal Kochatta organised corner meeting in Jeep No. MPO 1926 with a loud-speaker in village Uplai Tahsil Jaora at 6 p.m. opposite the hospital and in the said propaganda speech said :

"लोकेशन ने रामप्रताप ठासा को उम्मीदवार बनाया है। यह दलबदल है और रामप्रताप ठासा ने खुशालसिंह को पांच हजार रुपये बेकर ठाकुरों के वोट काटने को खड़ा किया है, जिससे ठाकुरों के वोट नाहटा जी को भा मिलें"।

(2) In another meeting at 6.30 p.m. held opposite the Temple in Baza, at Uplai, the said Manaklal Kochatta in his election propaganda speech said as under :

"लोकेशन से दलबदल रामप्रताप ठासा खड़े हो गये हैं और उन्होंने नाहाटाजी को हराते के लिए पांच हजार रुपये बेकर खुशालसिंह को ठाकुरों के वोट काटने के लिये खड़ा किया है जिससे ठाकुरों के वोट खुशालसिंह ले जायें। लेकिन जब तक ठाकुर भारतसिंहजी हमारे साथ हैं ठाकुरों को नहीं पदाया जा सकता। ठासा ने खुशालसिंह को बली का बकरा बना दिया है।"

(3) That on 28-12-79 the said Shri Manaklal Kochatta (D.W. 7) organised corner meeting in jeep No. MPO-1926 with a loud-speaker in village Dhodhar, Teh. Jaora at 5 p.m. opposite Janta Higher Secondary School, wherein during the course of his speech he said as under :

"विधायक कीमत्सिंह और रामप्रताप ठप्पा दोनों ही दलबदलू हैं। इन्होंने जनता पार्टी को धोका दिया है। और अब ठाकुरों को धोखा देने के लिये रामप्रताप ठप्पा ने खुशालसिंह को पांच हजार रु० देकर चुनाव में खड़ा किया है। डोहड़ की जनता ऐसे धोके धाजों को करारा जवाब देगी और अपना एक-एक वोट नाहटाज के पजे पर देगी।"

(4) Similarly in another meeting held at about 5.30 p.m. near the Temple in the said village Dhodhar, Shri Manaklal Kochatta, also during his election speech said as under :

"मोकबल वाले दलबदलू कीमत्सिंह और रामप्रताप ठप्पा नामी धोखेबाज हैं। पहले जनता पार्टी को धोका दिया और अब हमारे ठाकुर भाइयों को धोखा देने के लिये पांच हजार रुपये लेकर खुशालसिंह को खड़ा किया ताकि ठाकुरों के वोट कट जायें। लेकिन डोहड़ की जनता उन्हें करारा जवाब देगी, ऐसा भेरा विश्वास है।"

12. That during the course of election propaganda being carried on in favour of respondent No. 1 his Agents with his consent and that of his Election Agent respondent No. 13, made certain statements of facts mentioned below, which are false and which they and respondent No. 1 or his Election Agent respondent No. 13 either believed to be false or did not believe to be true in relation to the personal character or the conduct of respondent No. 2 Dr. Laxminarayana Pande, being statements reasonably calculated to prejudice the prospects of the election of respondent No. 2.

(1) In the public meeting held on 11-12-79 at about 3.00 p.m. in Dhodhar Chowk, opposite Hospital in the presence of respondent No. 1 Shri Bhawarlal Nahata, Shri Ramchandra Shah (D. W. 9), President Janapad Sabha, Jaora, with the consent of respondent No. 1, in his speech said as under :

"जावरा शूगर मिल पर किसानों और मजदूरों का लाखों रुपये बकाया है और जनता पार्टी की सरकार मध्य प्रदेश में है फिर भी डा० पान्डे मिल मालिकों के खिलाफ कोई कार्यवाही नहीं करना चाहते हैं। ये मिल मालिकों से मिल गये हैं और चुनाव के लिये जावरा शूगर मिल के मालिकों से दो लाख रुपये लिये हैं और पंजीपतियों के हाथ में खेस रहे हैं। इसलिये ऐसे आदमी को वोट नहीं देना चाहिये।"

(2) Similarly in the public corner meeting held on 11-12-79 at about 5 p.m. in village Hariyakheda near the Temple in the presence of and with the consent of respondent No. 1 Shri Jhamaklal Khariwal, President, Mandi Committee, Jaora in the election propaganda speech for respondent No. 1, also said as under :

"जावरा शूगर मिल वालों ने डा० पान्डे को पैसे से खरीद लिया है। और इस मिल मालिकों से मिलकर वे गरीबों का गया काट रहे हैं। किसानों के पेट पर लात मार रहे हैं। मजदूरों का गया घोट रहे हैं। मिल मालिकों से लिया हुआ दो लाख रुपये वारों तरफ पैसा लुटाकर यह वोटों को खरीदना चाहते हैं। इस गांव की जनता इनके भुलावे में नहीं आयेगी।"

(3) Similarly in the Public meeting held on 17-12-79 at about 9 p.m. at Chantaghar Choraha, Jaora in the presence of respondent No. 1 and with his consent Shri Manaklal, Kochatta (D.W. 7) in the course of his election speech said as under :

"डा० पान्डे आठ-मऊ साल से लोकसभा में हमारे नुमाइन्दे हैं। इसके पहले विधान सभा में भी रह चुके हैं। जब से ये लोक सभा में गये हैं, जावरा शूगर मिल वालों ने उन्हें खरीद लिया है।

और तब से ही गरीब किसानों और मजदूरों का पेट काटा जा रहा है। उनके गधे का पैसा नहीं मिलता। मजदूरों की पगारे नहीं मिलती। यह जग-जाहिर है कि शूगर मिल वालों ने दो लाख रुपये देकर पान्डेजी का मुटू बन्द कर रखा है और यही पैसा चुनाव में चल रहा है। ऐसे पत्र विकने वाले लोगों को जावरा की जानकार जनता कभी घोट नहीं देगी।"

(4) Similarly in the public meeting held on 20-12-79 at about 8 p.m. at village Laduna in Bazar Chowk, the respondent No. 13 Shri Surendrakumar Nahata (D.W. 16) the Election Agent of respondent No. 1 during his election speech said as under :

"खुशालसिंह ने ठप्पा से तो पैसा ले लिया और हमसे भी चुनाव के लिये पैसा मांगा था। हमने नहीं दिया तो डा० पान्डे ने खुशालसिंह को पांच हजार रुपये का लापच देकर चुनाव से बैठा दिया। ऐसे से उम्मीदवार खरीदकर डा० पान्डे चुनाव जितना चाहते हैं। क्या हमारे जिले की जनता ऐसे बाहरी आदमी को नुमाइन्दा बनाने की फिर से भूल करेगी?"

13. Further according to the petitioner respondent No. 1 Shri Bhawarlal Nahata and his Election Agent respondent No. 13 Shri Surendrakumar Nahata and others with their consent in the course of the election propaganda or respondent No. 1 addressed public meetings in the places mentioned below and during the speeches made such statements which amounted to undue influence and direct interference with the free exercise of electoral rights and in particular the impugned statements induced or attempted to induce electors to believe that they would become or would be rendered objects of divine displeasure or spiritual censure if they do not vote for respondent No. 1 or if they vote for respondent No. 2 or any other candidate. According to the petitioner such statements also amounted to an appeal by respondent No. 1 and others to vote for him and to refrain from voting for the Janata Party candidate, respondent No. 2 on the grounds of his religion, caste or community.

(1) On 17-12-1979 at about 6 p.m. a closed door meeting of the Jain Community was held at the residential house of Shri Nathulal Modi, at Sitamau, which was addressed by respondent No. 1 Shri Bhawarlal Nahata and with his consent by Shri Parkashchandra Sethi (D.W. 18) who was examined on Commission at Delhi) and in the said speech respondent No. 1 Shri Bhawarlal Nahata said as under :

"हमारे क्षेत्र में जैनी हमेशा आगे रहे हैं, इसलिए पूज्य नानाबाल जी महाराज सा० ने भी हम बार लोक सभा के लिए अपने समाज की ही व्यक्ति को आगे बढाने का आदेश दिया है। सेठी जी ने भी जैनी होने के कारण कोशिश करके मुझे इंदिरा जी से टिकिट मिलवाया। जन धर्म के मानने वालों का यह कर्त्तव्य है कि पूज्य महाराज सा० के आदेश का पालन करें। और यदि उनके आदेश का अपमान हुआ तो हम सभी पाप के भागी होंगे। और इस जिले में जैनियों का विशाल समुदाय होने पर भी सभी जैनियों को नीचा देखना पड़ेगा। इसलिये जैनियों का वोट जैन की ही वीजिये और सेठी जी के हाथ मजबूत कीजिये।"

In the said meeting Shri Parkashchandra Sethi (D.W. 18) during the Course of his speech also said as under :

"मध्य प्रदेश में एवं मध्यभारत में जैनियों ने राज्य किया है और आपकी मदद से हम आगे बढे हैं। आपके जिले में जैनियों का इतना बड़ा समाज होने के बाद भी आप लोकसभा के लिये नर आदमी को जितायें यह समझ में नहीं आता। हम फिर से इस क्षेत्र में जनसमाज को ही मात्र पढ़ना चाहते हैं। श्री नाहटाजी हमारे समाज के सेवक हैं और यदि यह जिते तो जैनियों का ही नाम रोशन होगा। इसलिये हमने समाज के सब लोगों को यहाँ इकट्ठा किया। जब चौधरी चरणसिंह जाटों के वोट ले सकते हैं और जगजीवनराम हरिजननों के वोट मांगते हैं तो नाहटाजी को जैनी होने के माने आपका वोट मिलना ही चाहिये।"

(2) On 24-12-79 at about 1.30 p.m. a closed door meeting of the Jain community was addressed by respondent No. 1 Shri Bhawarlal Nahata at Ramchandra Vishwanath Dharmshala, Manasa, in the presence of Jain Priest Shri Ranjit Muniji Maharaj and in the course of that speech, respondent No. 1 said as under :

"पूज्य श्री नानालालजी महाराज सा० एवं हमारे बीच बिराजे मुसीमहाराज श्री के आदेश से मैं चुनाव में खड़ा हुआ हूँ और आज जैन धर्म के एक सेवक के नाते सभी जैन-धर्मावलम्बियों का कर्तव्य है कि जैन होने के नाते वे पूज्य महाराज सा० के आदेश का पालन करें और नैर जैनी लोगों को अपना एक भी वोट न दें, क्योंकि जैन का वोट जैन को ही मिलना चाहिये। और उस नाते मैं ही आपके वोट का अधिकारी हूँ। किसी गैर जैनी को वोट देने वाले को पाप का भागी होना पड़ेगा।"

(3) On 24-12-79 at about 4.00 p.m. at Chunav Karya-laya, Rampura, a closed door meeting of the Jain community was held in which respondent No. 1 Shri Bhawarlal Nahata, during the course of his speech, said as follows :

"शिवकुमार पू० नानालाल जी महाराज सा० ने मुझे आशीर्वाद दिया है और मैं उनके आदेश से ही चुनाव लड़ रहा हूँ। हमारे क्षेत्र में जैनियों का प्रमुख है, फिर भी गैर जैनी हमारे वोट ले जाते हैं। हमारे वोट बंटने से ही हमें नीचा देखना पड़ता है। हमारा जैन समाज भारत में अल्पसंख्यक होते हुए भी उनकी कोई सुरक्षा नहीं है, इसलिये यदि जैनियों के वोट भी मुझे मिल गये तो मैं जीतकर लोकसभा में जाऊंगा और जैनियों के हक-हितों, मुसलमानों और हरिजनों की तरह सुरक्षित करने के लिये आवाज उठाऊंगा। इसलिये जैनियों के वोट जैनियों को ही मिलना चाहिये। मेरे पास इतना समय नहीं कि हर गांव में समाज के लोगों को अलग से मिल सकूँ। इसलिये आप गांवों में फैले हुए समाज के एक-एक व्यक्ति को समझावें कि आज जैन धर्म की रक्षा का जयमज्जा मखान है।"

(About the two alleged meetings—one held on 24-12-79 at 1.30 p.m. at Ramchandra Viswanath Dharmshala, Manasa and the other held at 4.00 p.m. held at Chunav Karya-laya, Nampura, Shri V. S. Kojie, learned counsel for the petitioner frankly conceded that the petitioner has not led any evidence about the said meetings and the evidence of P.W. 25 Sheonarayan Rathor is of no assistance to prove these allegations.)

(4) On 27-12-79, a closed door meeting of the Jain community was held at the residence of Shri Madanlal Karnavat, a Congress (I) worker and a relation of respondent No. 1, in his house at Pipli-Bazar, Jaora, where the respondent No. 1 Shri Bhawarlal Nahata during the course of his speech said as under :

"जाबरा में ज्यादातर आप सभी मेरे रिश्तेदार हैं और पूज्य श्री नानालालजी महाराज सा० का आशीर्वाद लेकर मैं आपके बीच आया हूँ। उनका संदेश आपको मिला ही होगा। मैं इस चुनाव में जीता तो जीत पूज्य श्री महाराज सा० की श्रीर जन धर्म में विश्वास रखने वाले जैनियों की होगी। हर जैन का वोट जैन उम्मीदवार होने के नाते मुझे ही मिलना चाहिये। आज चरणसिद्ध और जगजीवनराम अपनी जान व समाज के नाम पर वोट मांगते हैं, तो क्या जैन समाज पिछड़ा ही रहेगा? आपके लिये ही सेटीजी ने इंदिराजी से कहकर मुझे टिकट दिलाया है इसलिये जैन समाज को अपना गौरव रखने के लिये मुझे वोट देना चाहिये और हर जैनी तक पु० महाराज सा० का संदेश पहुंचना चाहिये।"

(5) On 17-12-79 at about 10.00 p.m. at Hamalpura, Jaora, near Masjid, in a welcome address by the Muslims, the respondent No. 1, Shri Bhawarlal Nahata and in his presence and with his consent Shri Prakashchandra Sethi, delivered election speeches as under :

(i) Shri Bhawarlal Nahata said :

"मुसलमान भाईयों के लिए खास तौर पर मेरा निवेदन है कि अभी इस एरिया के लिये सेटी जी अजमेर शरीफ की मन्तव्य लेकर आये हैं। इंदिराजी से कहकर सेटी जी ने ही मुझे टिकट दिलाया है। हम मुसलमानों के हमदर्द हैं और जनता पार्टी के नकाब में आर० एम० एम० के डा० पान्डे मुसलमानों के हमेशा छिपे बुझाने रहे हैं। मुसलमानों के हकों की रक्षा इंदिरा जी ने हमेशा की है। और इसीलिये हाथ का पंजा अपना निशान चुना है। अभी वोस्तों ने बताया यह हाथ का पंजा हजरत अली के हाथ का पंजा है। जिसे हर मुसलमान को मजहबी तौर पर मानना जरूरी है। फिर आप तो जाबरा के रहने वाले हैं और हुसैन टकरी शरीफ पर यह अली का पंजा चढ़ाने हैं। उसी अली के पंजे के लिये हम आपसे वोट मांगने आये हैं।"

(ii) Shri Prakashchandra Sethi said as under :

"जाबरा के तमाम मुसलमानों से मेरी गुजारिश है कि अभी कुछ बिनो पहले शाही हमाम बुखारी ने हिन्दोस्तान के तमाम मुसलमानों को पैगाम दिया है कि इंदिरा जी के पार्टी के लोगों को ही वोट देना है। मैंने भी ख्वाजा गरीब नवाज की मन्तव्य ली है। और अगर आप के इलाके से नाहटाजी जीते तो हम अजमेर शरीफ में खतरा बढ़ावेगे। हमारा निशान इंदिराजी में पंजा चुना है। और यह पंजा मुसलमानों को मजहबी तौर पर सूझ देता है। यह पंजा अली हजरत का पंजा है। और हमको वोट नहीं दिया तो अली हजरत आप पर कहर बरसावेगे।"

(6) On 30-12-1979 at about 7.00 p.m. at Madarpura Chowraha, Mandasaur, in a reception organised by the Muslims of the locality, Shri Payaam Wasif (DW 10) a Congress worker of Mandasaur, in the presence of and with the consent of respondent No. 13 Shri Surendra Nahata, the election Agent of respondent No. 1, during the course of his speech said as under :

"मन्बसीर के मुसलमानों का मैं कहना चाहता हूँ कि जनता पार्टी बंगाली जमात आर०एस०एस० की दूसरी शक्ति है। और डा० पान्डे फिरका परस्त है और आर०एस०एस० के सरगना हैं। मुसलमानों ने नेहरू जी के जमाने से कांग्रेस की मरपल्ली कबूल की है। मौलाना बुखारी साहब ने दिल्ली की जामा मस्जिद से ऐलान किया है कि इन फिरकापरस्तों को तमाम करने के लिए हमें इंदिरा गांधी के निशान पंजे को वोट देना चाहिये। अगर आप मन्बे मुसलमान हैं और हजरत अली के बन्ने हैं तो समझ लीजिये कि यह पंजा अली का पंजा है। अली हजरत के पंजे को आपने जिताना तो मुसलमानों का हिन्दुस्तान में कुछ असर बुलन्द होगा और आपका वोट अली हजरत को वोट होगा। अगर अली के पंजे को किसी मुसलमान ने वोट नहीं दिया तो मान लो वह इस्लाम का बन्दा नहीं है—वो काफिर है।"

(7) On 1-1-1980 at about 12 noon at Main Chowk Malhar-garh, in the presence of respondent No. 1 Shri Bhawarlal Nahata and with his consent Shri Payaam Wasif (DW 10), during the course of his speech said as under :

"मेरा इस हवाके के तमाम मुसलमानों के नाम यह ऐलान है कि अगर तुम इस्लाम के बन्ने हो और दीनदार मुसलमान हो तो पंजे के निशान को अपना वोट दो। यह पंजा अली हजरत का पंजा है। खास तौर से अली हजरत का पैगाम लेकर ख्वाजा गरीब नवाज ने इंदिराजी को सपना दिया था कि हिन्दोस्तान में मुसलमान तेरे हमदर्द हैं और तू फिर मे इस मुल्क पर राज करेगी — मुसलमान तेरा साथ देगा बशर्ते अली हजरत के पंजेको अपना निशान बना ले। अहमदशाहा के हुक्म को मानकर इस्लाम ने हजरत अली के पंजे को अपना निशान बनाया। और उसी के हुक्म पर मुसलमानों को 20 परसेंट रिजर्वेशन का वादा किया। इसलिये पंजे को जिताना हर मुसलमान का अहम फर्ज है। अगर किसी मुसलमान ने अली हजरत की बात नहीं मानी तो क्यामत के दिन पाकजवां मुसलमानों की रहें खुदाबनताला के सामने तुम पर सानत नाजिर करेगी। और तुम काफिर ठहराये जावो।"

(8) On 27-12-1979 at about 5.30 p.m. at their Masjid (though the name of the town of village is not mentioned parties did not dispute that this has reference to the Masjid at Sitamau) a reception was arranged by the Muslims in which Shri Aziz Qureshi (DW 4) a Congress Leader and former Minister in the presence of and with the consent of respondent No. 13 Shri Surendrakumar Nahata, the Election Agent of respondent No. 1, during the course of his speech said as under

‘मुझे नाल्टाजा ने खासतौर से बुलाया है। मुसलमानों पर पिछले छह साल से जो कहर डाला गया और अनीकत और अमानत-पुर में जो कलह घाम किया गया वह बेमिसाल है। इन्दिराजी ने मुसलमानों पर हमेशा खूब बख्शा है। उनकी हठमत्ता में ही हमारा मजहब सनामान रह सकता है। और इसीलिए इन्दिराजी ने हजरत अली के पंज की सरपरस्ती में चुनाव का जंग छेड़ा है। अगर अली हजरत का यह पंजा पिट गया तो हम पर अन्नाहताला की जो कहर बरपा होगी वैसी ऐसी मुसीबत जहाँ होगी कि हमारा नामां निशा मिट जावेगा इससे मेरी तमाम मुस्लीम बिरादरी से गुजरिश है कि तुम्हारे बीच आए आर०एस०एस० के दंगाई काफिरों से होशियार रहो और अपना वोट अली के पंजे पर देकर नाल्टाजी को कामयाब बनाओ।’

14. Further according to the petitioner on 3-1-80 at Polling Centre No. 63, Prathamik Shala Bhawan, Angari, in 316 Suvasara Vidhan Sabha Constituency, about 40 voters were collected at about 3 p.m. waiting for their turn to poll their votes, but the Polling Officer of the said Polling Station had closed the polling before 4 p.m. i.e. the scheduled time for the close of polling and on request by Polling Agents present there, he turned out the Polling Agents except one Shri Joshi a Polling Agent of respondent No. 1 and closed the polling station. Besides this, the Polling Officer had also illegally stopped polling between 12.30 p.m. and 2.30 p.m. during which period more than 100 voters had to return back without casting their votes and thus they were denied the polling right. Thus, in this manner the Polling Officer denied the voting rights to the said voters despite repeated requests by electors as well as by Polling Agents present there, coupled with the fact that a complaint to this effect was made by Manalal Patidar (PW 2) to the Station House Officer, Police Station, Suvasara Ex- P-1 and to the Zonal Officer Ex- P-2 and had also prepared a panchnama to that effect Ex- P-3.

(2) That on 3-1-80 at polling station No. 17 Madhyamik Vidyalaya, Shamgarh in 316 Suvasara Vidhan Sabha Constituency No. 10, female voters reached the polling station before 4 p.m. and were waiting for their turn to cast their votes but the Polling Officer denied them the right to cast their vote about which respondent No. 2 Dr. Laxminarayan Pande also made a complaint-cum-request to the Polling Officer of that Polling Station to permit them to cast their votes, but that request was turned down. (About this grievance the learned counsel for the petitioner frankly conceded that there is no evidence or any other material on record to prove this allegation made by the petitioner. He, therefore, did not press this allegation.)

(3) Further according to the petitioner on 3-1-80 at polling station No. 71 Prathamik Shala Bhawan, Nanasa Khurd in 319 Neemuch Vidhan Sabha Constituency when polling in favour of respondent No. 2 was going on some Congress workers by name Kaniram, Pappulal and Raj Singh, caused disturbance at the polling station outside the polling booth thereby creating a tense atmosphere in the vicinity as a result of which many voters going to cast their votes could not do so. Further according to the petitioner due to this action on their part the polling at the said polling station was postponed and stopped for about an hour i.e. between 2.30 p.m. and 3.30 pm and the voters were denied their voting right during that period. (The learned counsel for the petitioner Shri V. S. Kokie frankly conceded that the petitioner has failed to prove this allegation and in absence of any evidence he would not press the same as even the evidence of P.W. 13 Madanlal Rathor does not at all help the petitioner on this point.)

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15. Respondent No. 2 Dr. Laxminarayan Pande and respondent No. 8 Shri Dayaram have supported the petitioner Respondent No. 1 Shri Bhawarlal Nahata, No. 3 Shri Rampratap and No. 13 Shri Surendrakumar Nahata have, while denying the allegations of the petitioner contested all the allegations and charges made or levelled against them. In fact the petition has been hotly contested mainly by respondent No. 1 Shri Bhawarlal Nahata as he himself has cross-examined the petitioner's witnesses, cross-examined respondent No. 2 and has also been examined his own witnesses and also himself argued the whole case on merits. Respondent No. 14 Shri Harishankar Pathak, the Returning Officer, has also denied the allegations made against him with which he was concerned.

16. On these pleadings of the parties, following issues have been framed :

Issues	Findings
1. Whether the petitioner is a voter enrolled in the Jaora Vidhan Sabha Constituency No. 312 of the Lok Sabha Constituency No. 40 ?	Yes.
2. Whether respondent No. 1 Bhawarlal Nahata appointed his son respondent No. 13 Surendrakumar Nahata as the Election Agent ?	Yes.
3. Whether any corrupt practices as alleged by the petitioner, were committed by respondent No. 1 and/or respondent No. 13 as the Election Agent of respondent No. 1 ?	Not proved.
4. (a) Whether the respondent No. 14, the Returning Officer has committed the breach of the provisions of the Representation of People Act, 1951 and the Rules made thereunder for the conduction of elections counting of votes and the declaration of the results, where by the election results were materially affected ?	Not proved.
(b) Whether on that count the election of of respondent No. 1 is void ?	No.
5. Whether 10,709 ballot papers were rejected by the Returning Officer without any proper reason, cause or ground.	Not proved.
6. Whether the returning Officer respondent No. 14 has failed to prepare the result sheet in Form No. 20, as contemplated under Rule 56(7) of the Conduct of Election Rules, 1961 ?	Not proved.
7. Whether the Returning Officer respondent No. 14 failed to comply with the provisions of S. 58 of the Representation of the People Act, 1951 and gave no opportunity to the candidates or their Counting Agents to apply for recounting of the votes ?	Not proved.
8. Whether the ballot boxes of Polling Station No. 14 Chapana situated in Sitamau Vidhan Sabha Constituency No. 317 were allowed to be tampered with to affect materially the results of the election ?	Not proved.
9. Whether the ballot boxes of Maldhana polling station No. 41 were tampered with to the detriment of the interest of the voters so as to materially affect the result of the election of the constituency ?	Not proved.

10. Whether the respondent No. 1 himself or his Election Agent have committed any corrupt practice as alleged by the petitioner ? Not proved.

11 (a) Whether on 3rd January, 1980 (i) i.e. the polling day, respondent No. 1 came to the polling station No. 61, Jain Panchayati Nohara (Jaora) at about 3.20 p.m. in a car number MPO-995 wherein the symbol of 'hand' and election posters saying vote for Congress (I) were displayed and the respondent No. 1 made an election propaganda speech within the prohibited area of 200 yards from the polling station ? Not proved.

(b) Whether the said car was similarly used by respondent No. 1 on the polling day within the prohibited area of polling stations Nos. 65 & 66 Mahatma Gandhi Balak Uchatar Madhyamik Vidyalaya Jaora, at about 3 p.m. to propagate his cause of election ? Not proved.

12. Whether Shri Manaklal Kochatta was appointed and declared by respondent No. 1 as his Election Organiser and whether during the course of election propaganda with the consent of respondent No. 1 or his election agent, the said Organiser Shri Manaklal Kochatta publish false statements of facts in relation to the personal character and conduct of respondent Nos. 2 and 3 as set out in para 13 of the petition Not proved.

13. Whether, as set out in para 15 of the petition, the respondent No. 1 and his election agent respondent No. 13 and others with their consent, in the course of the election propaganda of respondent No. 1 addressed public meetings and made statements which amounted to undue influence and direct interference with the free exercise of electoral rights and by such statements induced or attempted to induce electors to believe that they would become or would be rendered objects of divine displeasure or spiritual censure if they do not vote for respondent No. 1 and if they vote for respondent No. 2 or any other candidate ? Not proved.

14. Whether as alleged in para 16 of the petition, the voters were denied their voting right by the Polling Officers at various polling stations of the Constituency ? Not proved.

15. Whether the election of respondent No. 1 is void because his election results have been procured by corrupt practices committed by himself, his election agent respondent No. 13 and other persons with the consent of respondent No. 1 and his election agent respondent No. 13 ? No.

16. Whether Shri P.C. Sethi, a candidate for the Parliamentary Elections held in January, 80 having not been impleaded as a party in this petition the same deserves to be dismissed for non-compliance of S. 82 of the Representation of People Act ? No.

17. Relief and costs ? Petition dismissed

17. It may be noted at the outset that the petitioner, who has filed his petition, as a voter has no personal knowledge as such regarding the malpractices, corrupt allegations, illegalities or irregularities said to have been committed during the entire process of the election, about which he has made averments in the said election petition. But according to him his knowledge is based on the basis of the information received by him when he contacted different persons after the results of the election were declared in order to find out whether any such illegalities, mal practices or corrupt practices were committed by the returned candidate, namely respondent No. 1, his Election Agent respondent No. 13 or by any other person with the consent of respondent No. 1 and/or respondent No. 13.

18. The fact that the petitioner is a voter from Jaora has been satisfactorily proved by his own evidence, which is not all challenged in cross-examination. His oral testimony has been further corroborated by the voters list Ex.-17 wherein his name has been entered as a voter at serial No. 1261, portion marked A to A. Besides the respondent No. 1 either in his statement or by any other evidence also has not at all tried to disprove the fact that the petitioner is a voter from Jaora Constituency. However, it is somewhat surprising that the respondent No. 1, before filing the written statement atleast should not have verified the fact from the electoral roll whether the petitioner is a voter from Jaora, which comes under the Parliamentary seat of Mandsaur especially when the respondent No. 1 who is a senior Advocate from Mandsaur with a long standing and has contested several elections in the past also and is said to have made Jansampark coupled with the fact that the petitioner is an industrial consultant residing at Jaora at that time.

19. It is not in dispute that respondent No. 13 Shri Surendrakumar Nahata is the son of respondent No. 1 Shri Bhawarlal Nahata. It is further not in dispute that they all reside together in the same house at Mandsaur. It is further not in dispute that the said respondent No. 13 had filed his nomination paper for the said Parliamentary seat as a dummy candidate of respondent No. 1, as admitted by respondent No. 1 in para 6 of his written statement though this fact is denied by respondent No. 13 in the separate written statement filed by him. It is no doubt true that the petitioner in the petition has not given the date when respondent No. 1 appointed respondent No. 13 as his Election Agent, but though this being a fact within the special knowledge of these respondents they have in their written statements given an evasive reply. But the respondent No. 1 Shri Bhawarlal Nahata, in paragraph 4 of his statement has clearly admitted that he appointed his son respondent No. 13 Shri Surendra Nahata as his Election Agent as per Ex. D-6 dated 2-1-80, only a day before the date of polling. This fact has also been admitted by Shri Surendra Nahata, who has been examined as D.W. 16 by respondent No. 1. Therefore it has been proved that respondent No. 13 was appointed as his Election Agent atleast from 2-1-1980.

Section 40 of the Representation of the People Act, 1951 which defines an Election Agent is as follows:

"40. Election Agents.—A candidate at an election may appoint in the prescribed manner any one person other than himself to be his election agent and when any such appointment is made, notice of the appointment shall be given in the prescribed manner to the returning officer."

Section 45 of the said Act, which defines the functions of the Election Agents, is as follows:

"45. Functions of election agents.—An election agent may perform such functions in connection with the election as are authorised by or under this Act to be performed by an election agent."

Therefore, it has been established that respondent No. 13 Shri Surendrakumar Nahata was appointed as the Election Agent of respondent No. 1 Shri Bhawarlal Nahata.

20. As the respondent No. 13 was appointed as the Election Agent of respondent No. 1 on 2-1-80 as per Ex. D-6, it is no doubt true that the publication of any false statement by him earlier to that date would not invalidate the election of respondent No. 1, unless it is proved that the respondent No. 1 has consented to the same as has been held in AIR 1970 Supreme Court, 442 (Raghuvir Singh v. Kaghur Singh Kushwaha). The petitioner in his petition has nowhere stated the exact date of appointment of respondent No. 13 as the Election Agent of respondent No. 1 nor there is any other evidence or material placed on record to indicate that respondent No. 13 was appointed as the Election Agent of respondent No. 1 prior to 2-1-1980 and the allegations made in the petition regarding the consent of respondent No. 13 as Election Agent, pertaining to some of the speeches referred to in the petition are of a general nature. Respondent No. 13 Shri Surendrakumar Nahata who has been examined as a witness D.W. 16 by respondent No. 1 has deposed that in the said election he had filled up his nomination form as a candidate just out of fun so that his name may appear in the local papers. He has further admitted that when he filled up and submitted his nomination form he very well knew that his father Shri Bhawarlal Nahata respondent No. 1 is also contesting the same Parliamentary seat to the House of the People as a Congress (I) candidate and that he had absolutely no intention of contesting the election against his own father, namely the respondent No. 1. It is further clear from his statement that when he was appointed as the Election Agent by his father, respondent No. 1 as per Ex. D-6, he had absolutely no information regarding the rights and duties of an Election Agent (para 19). He has further admitted that on the date of counting of votes i.e. 7-1-80, even though he was present in the hall where counting was to take place, he did not do any work as an Election Agent. Considering the fact that he happens to be the son of respondent no. 1 and also staying with him jointly such type of statement cannot be easily accepted. I do not mean to suggest that he could not contest the said election against his own father in his own right, though it is not clear what was the propriety in appointing him on 2-1-80 as the Election Agent, after his withdrawal as a candidate, a day prior to the date of polling on which date according to S. 126 of the Act there was prohibition of any propaganda by public meetings on the preceding day of the election and in the election day.

21. Before dealing with the merits of the case regarding the allegations of corrupt practice on the basis of which the petitioner wants that the election of the returned candidate respondent No. 1 be declared void. I would like to dispose of issue No. 16 according to which a plea has been taken by the respondent No. 1 that Shri Prakashchandra Sethi, a candidate for the parliamentary election held in January, 1980, though for the Indore Parliamentary seat, having not been impeached as a party in this petition, the same deserves to be dismissed for non-compliance of S. 82 of the Act. The respondent No. 1, who himself argued the petition did not seriously press this issue though he submitted that according to S. 79(b) 'candidate' means a person who has been or claims to have been duly nominated as a candidate at any election. He, therefore, halfheartedly submitted that the words used 'at any election' in the definition of candidate refers to the other candidates also who could be covered by the said definition of 'candidate'. But this point has been concluded by the decision reported in AIR 1970 Supreme Court, 694 (Smt. Kanta Kathuria v. Manak Chand Srana) wherein, in paragraph No. 15 and paragraph No. 43 it has been held as under:

"15. As regards the supplementary point that the petition was bad for non-joinder of Mr. Mathura Das Mathur against whom corrupt practices were alleged in the petition, we are of opinion that S. 82

of the Representation of the People Act, 1951, in its Cl. (b) speaks of candidates at the same election and not persons who are candidates at other elections. As Mr. Mathur was a candidate from another constituency he need not have been made a party.

xx xx xx xx

"43. There is no force in the third point raised by the learned counsel for the appellant. Section 82 of the Representation of the People Act, 1951, reads as follows:

"82. A petitioner shall join as respondents to his petition—

- (a) where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed all the returned candidates; and
- (b) any other candidate against whom allegation of any corrupt practice are made in the petition.

In this context the words 'any other candidate' plainly mean a candidate in the election for the constituency which is the subject matter of the petition."

Therefore, I find that Shri Prakashchandra Sethi was not a necessary party to this election petition and his non-joinder is not fatal to this petition in any way.

22. Though there is no specific issue framed as to whether respondent No. 14, the Returning Officer, was a necessary party to this petition or not, the learned counsel appearing for respondent No. 14 Shri Surjeet Singh submitted that considering the grounds mentioned in S. 100 of the Act, on proof of which an election can be declared void, the said Returning Officer was at least a proper party as in this petition certain allegations have been made against him so far as the method and procedure adopted by him on the day of counting is concerned [Please see AIR 1969 Bombay, 177 (H.R. Gokhale, v. Bharucha); AIR 1969 Madras 116 (K. T. Koshalram v. Dr. Santhosham) and also AIR 1973 Punjab and Haryana, 163 (S. Iqbal Singh v. Gunda Singh Badal) which has dissented from these two authorities].

23. It stated earlier so far as the allegations of corrupt practices are concerned, the petitioner has divided them into three categories:

- (A) Publication of false statements of facts in relation to the personal character and conduct in relation respondent No. 3 Ramprasad Dhakad (Thanna). [Paragraph 13 of the petition—S. 123(4) of the Act.]
- (B) Publication of the false statements of facts in relation to respondent No. 2 Dr. Laxminarayan Pande. [Paragraph 14 of the petition—S. 123(4) of the Act.]
- (C) Allegations relating to undue influence and under the belief of becoming an object of divine displeasure or spiritual censure and/or appeal for vote on the grounds of religion, caste or community or the relations symbol. [Paragraph 15 of the petition—S. 123(2) of the Act.]

24. The relevant provision of S. 100 with which we are concerned is as under:

"100. Grounds for declaring election to be void.—

- (1) Subject to the provisions of sub-section
- (2) if the High Court is of opinion—
 - (a)

(d) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agents; or

(e)

(d) that the result of the election in so far as it concerns a returned candidate, has been materially affected.

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the High Court shall declare the election of the returned candidate to be void.

(2) If in the opinion of the High Court a returned candidate has been guilty of an agent, other than his election agent, of any corrupt practice but the High Court is satisfied.

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent of the candidate or his election agent;

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election, and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents.

then the High Court may decide that the election of the returned candidate is not void."

25. At this stage it may also be mentioned that the petitioner himself, instead of stepping into the witness box in the beginning, has examined himself at the end as P. W. 47. Besides, even though he has stated that he has reproduced the extract of the alleged speeches ad-verbatim on the basis of the information received and notes taken down by him, he has not produced the original writings from which he has reproduced the same in the petition. Further according to the provisions of Order 18, Rule 3A of the Code of Civil Procedure, it has been provided that where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded permits him to appear as his own witness at a later stage. But in the present case no such application was filed on behalf of the petitioner.

26. According to the petitioner (para 13(A)) two meetings of the Congress (I) party were held on 24-12-79 in village Uplai in Tahsil Jaora one at 6 p.m. opposite the hospital and the other at 6.30 p.m. near the Temple which was addressed by D. W. 7 Shri Manaklal Kochatta, Vice President of the Indian National Congress (I) Committee, Ramam and Election Organizer (Chunav Sanchalak) of respondent Shri Bhawarlal Nahata. According to the petitioner the speech given by Shri Manaklal Kochatta in both these meetings was with the consent of respondent No. 1 or his Election Agents. The witness examined by the petitioner regarding these meetings are P. W. 8 Shri Venkatlal, resident of village Saral, P. II. 45 Shri Umed Singh, resident of Uplai who sent the letter Ex. P-14 dated 25-12-79 to Sheonarayan Modi (P. W. 33) who has also been examined on this point to prove this letter. The objectionable part of the speech in both these meetings relating to the personal character and conduct of respondent No. 3 Rampratap Thanna has already been reproduced earlier.

27. P. W. 8 Shri Venkatlal has deposed that a day before the Christmas in December, 1979 he had been to village Uplai and attended both the meetings organised by the Congress (I) party in which D. W. 7 Shri Manaklal Kochatta said that the Janata Party during its regime for the last 2 1/2 years has done nothing for their area except that the crime of theft, robbery and dacoity is on the increase and, therefore, Shri Bhawarlal Nahata must succeed in this election by majority of votes and the voters need not be swayed away by people who have cross the floor (dal Badalu) for instance, Shri Rampratap Thanna, respondent No. 3 has paid Rs. 5000 to Shri Khushasingh, respondent No. 6 for contesting the said election as a candidate so that the votes of the Rajputs may be divided and you should vote for Shri Nahata whose election symbol is and. According to him about 25 persons were present in this meeting including Shri Umed Singh (P. W. 45), who was the Sarpanch of that village.

28. Further according to this witness the same type of speech was also repeated in the second meeting. He has also mentioned the names of some of the persons who were actually present at these meetings, but those independent witnesses have not been examined. He has further deposed that even though P. W. 45 Shri Umed Singh was present at both these meetings, he had told him regarding the speeches given Shri Manaklal Kochatta (D. W. 7) and except Umed Singh he did not talk about the objectionable part of the speech to any else. This witness has also admitted that he has also Shri Umed Singh (P. W. 45) are workers of Janata Party. He has also admitted that he knows respondent No. 3 Shri Rampratap Thanna as also respondent No. 6 Shri Khushal Singh, but he has never met them so far. Besides he has also admitted that apart from the said two meetings he never attended any other meeting organised by Congress (I) Party. It is also clear from his statement that after the speech of Shri Manaklal Kochatta (D. W. 7) was over in both the meetings, he did not talk of any other person in the said village. Further according to him, while he was returning from Jaora to his village Sarsi, on the way he was called by Shri Umed Singh (P. W. 45) on account of which he halted in village Uplai for some time and attended these meetings.

29. P. W. 45 Shri Umed Singh has deposed that during the Parliamentary elections held in 1980 he was a worker of the Janata Party. That on 24-12-79 he attended the two meetings organised by the Congress (I) party in village Uplai which were addressed by Shri Manaklal Kochatta (D. W. 7) the first at 5.45 p.m. and the other one at 7 p.m. According to him in both the meetings Shri Manaklal Kochatta said that Dr. Laxminaryan Pande (respondent No. 2) has done nothing, the Lokdal has put up Shri Rampratap Thanna (respondent No. 3) as their candidate who is dalbadalu, that Shri Rampratap Thanna has also put up Shri Kushal Singh (respondent No. 6) as a candidate after paying him Rs. 5000 so that the votes of Shri Bhawarlal Nahata may be divided. He has also given out certain names of persons who were present at these meetings. He has also stated that regarding the said meeting he had sent an Inland letter Ex. P-14 dated 25-12-79 by post to Shri Sheonarayan Modi in which he had complained about the manner in which speeches of Congress (I) party workers are being delivered including the meeting addressed by Shri Manaklal Kochatta and thus trying to prejudice the voters by making false statements and casting aspersions on the personal conduct and character of the contesting candidates referred to above.

30. It may be noted that the jeep number in which Shri Manaklal Kochatta had come there with a loud-speaker affixed thereon has not been mentioned, though the petitioner has in his petition given the number of the jeep as MPO 1926. In his cross-examination he has admitted that after writing the letter Ex. P-14, which according to the mark on receipt affixed thereon is 29-12-79, he had met Shri Sheonarayan Modi on the next day i.e. 30-12-79, but Shri Sheonarayan Modi did not talk to him about the complaints in connection with the said election, which is somewhat usual. He has further admitted that in both these meetings Shri Ramchandia Shah (D. W. 9), Shri Bharat Singh (D. W. 15) and Shri Surendrakumar Nahata (D. W. 16) were not present. However, in Ex. P-14 he has mentioned the presence of these three persons also. It, therefore, also appears somewhat doubtful.

31. The petitioner P. W. 47 Shri Narendra Joshi, who noted down about the information received from the people he met, has in his note Ex. D-4, noted down the place and time of the first meeting and the jeep number mentioned herein is MPO-

1926 and not MPO 1926 as mentioned by the petitioner in his petition. It would also appear that there is no uniformity in the statements of P.W. 8 Shri Venkatal and P.W. 45 Shri Omka Singh regarding the actual words spoken by D. W. 1 Shri Manaklal Kochatta as both these witnesses have in their statements omitted certain portion of the objectionable part of the alleged speeches about which there is a mention in Ex. D-4 which has been copied down in the petition.

32. P. W. 33 Shri Sheonarayan Modi, who admittedly is a worker of the Janata Party and in the Lok Sabha election held in January, 1980 was looking after the election work on behalf of Janata Party for the Jaora Vidhan Sabha area, has admitted to have received this letter Ex. D-14 in which he has mentioned the receipt of the said letter on 29-12-79, which also tallies with the postal mark of the receiving station affixed thereon. The criticism of respondent No. 1 that this letter Ex. P-14 has been a concocted one and forged postal mark has been affixed thereon cannot be accepted in absence of any other evidence to that effect. It may also be noted that neither in the petition nor in the testimony of these witnesses there is anything to indicate about the presence of respondent No. 1 and respondent No. 13 or either of them.

33. D.W. 7 Shri Manaklal Kochatta has deposed that in the Lok Sabha election held in January, 1980 the District Congress(I) Party of Jaora had appointed Shri Chandrasekhar Bhatti as the Chunav Sanchalak for the Jaora constituency and that he was the Vice President of the Congress(I) party for the Ratlam district. He has denied to have ever visited village Uplai, Dhodhar and Hariya Khedi on the dates mentioned in the petition nor has he addressed any meetings in those villages on the dates mentioned in the petition nor he spoke anything against the personal character and conduct of Dr. Laxminarayan Pande, respondent No. 2, Shri Rampratap Thanna, respondent No. 3 and Shri Khushal Singh respondent No. 6. He has further denied to have made any speech on 17th December, 1979 at Ghantaghar, Jaora and has categorically denied to have used any such language or words as mentioned in the petition regarding the personal conduct and character of these three respondents or that he ever acted as the Agent of respondent No. 1 or that at his instance and with his consent he gave any speech during that election period, though he has admitted that on behalf of the Congress(I) party he no doubt made the election propaganda in the Vidhan Sabha area of Jaora according to the instructions and directions received from Shri Chandrasekhar Bhatti, who was the Chunav Sanchalak and that it was the Chunav Sanchalak who was making all the arrangements for the election propaganda speeches, including the arrangements for the loud-speakers. He has also categorically denied the suggestion that his opinion regarding Dr. Laxminarayan Pande, respondent No. 2 is such that since he was elected as the member of the Lok Sabha he i.e. Dr. Laxminarayan Pande has been purchased by the owners of Jaora Sugar Mills and has also categorically denied to have said anything in the alleged speech at Jaora on 17th December, 1979 casting aspersions and making false allegations against the personal character and conduct of respondent No. 2. However, he has admitted that on the counting day he was present in the hall at Ratlam as the Counting Agent of respondent No. 1 Shri Bhawarlal Nahata.

34. This witness Shri Manaklal Kochatta has further categorically admitted that he has been a member of the Congress Party since 1964 and after the division of the said party in 1969 he has been with the Congress(I) party and an active worker thereof holding important and responsible position in the said party. But this witness in paragraphs 50, 51 and 53 has stated that after the filing of the said election petition he never met respondent No. 1 Shri Bhawarlal Nahata or anyone else nor did he have any talk with the said respondent. This part of the statement of the witness appears to be quite unnatural. It is unlikely that a person of his type holding important position in the Congress(I) party and having also made propaganda in the said election for the respondent No. 1, would not try to know anything about the allegations made in the said petition or that the respondent No. 1 would not care to contact him to verify regarding the speeches said to have been delivered as mentioned in the petition.

35. The evidence of Shri Manaklal Kochatta (D.W. 7) was criticised on behalf of the petitioner by his learned counsel Shri V. S. Kokje on the ground that this witness is vitally interested in respondent No. 1 and that he has not produced

any record either of his own or of his party regarding the details of the tour programme undertaken during that election and the places which he visited for election propaganda. This criticism does have some force, but that by itself does not prove the case of the petitioner in absence of any convincing evidence to that effect.

36. As regards the two meetings held in village Dhodhar on 26th December, 1979—one at 5 p.m. opposite Janata Higher Secondary School and another at 5.30 p.m. near the Temple, said to have been addressed by D.W. 7 Shri Manaklal Kochatta regarding the personal character and conduct of respondent No. 3 Shri Rampratap Thanna (Para 13B) the petitioner has examined P.W. 6 Shri Rameshchandra Upadhyaya and P.W. 7 Shri Bahadur Singh.

37. P.W. 6 Shri Rameshchandra Upadhyaya, who is an Agriculturist from village Barkhedi has deposed that in the meeting held by the Congress(I) party five or six days before the date of voting, he was present in village Dhodhar and in the two meetings in which he was present Shri Manaklal Kochatta (D.W. 7) as also Shri Jhamaklal Khariwal gave their speeches. According to the said witness P.W. 7 Shri Manaklal Kochatta in these meetings had said that both Legislators Shri Komalsingh and Shri Rampratap Thanna respondent No. 3 are dalbadalus that in order to divide and cut the votes of Thakurs Shri Rampratap Thanna has put up Shri Kushal Singh, respondent No. 6 as a candidate and has paid him Rs. 5000 for contesting the election. Therefore, you should not vote for such people. He has further stated that he did not have any talk with other persons in connection with these meetings nor he attended any election propaganda meeting arranged by any other party during that election. According to him on that date he had been to Dhodhar hospital as his son was indisposed and that even though the doctor at Dhodhar had examined his son at 3.30 p.m. he remained in village Dhodhar and also attended both the meetings held at 5 p.m. and 5.30 p.m. though he has not assigned any satisfactory reason as to why he was required to remain in that village till that time especially when his son was indisposed and who was already examined by the doctor much earlier on that day. He has further deposed that in the said meeting Shri Bahadur Singh (P.W. 7), who was the Sarpanch of the village was also present though he was unable to give names of any other persons who were present in the said meeting. He has further admitted that apart from the said two meetings he did not attend any other election meeting arranged by any party. Further according to him in the said meeting there were 30 or 40 people present, but no other person has been examined. This witness has also deposed that in the said meetings apart from Shri Manaklal Kochatta (D.W. 7), Shri Jhamaklal Khariwal (D.W. 13) President Block Congress (I), Jaora, also gave his speech, but the petitioner is silent in his petition about any speech having been made by Shri Jhamaklal Khariwal also.

38. P.W. 7 Shri Bahadur Singh, Sarpanch of village Dhodhar has deposed that 5 or 6 days before the date of polling, Congress(I) party had organised a meeting in which Shri Manaklal Kochatta (P.W. 7) gave his speech in which he has stated that the position of the Janata Party, which is in power, is becoming precarious, these are the people who cross floors (dalbadalus) and, therefore, vote for Congress (I). From the testimony of this witness, who was obviously not cross-examined at all, nothing has been brought out to indicate that any part of the alleged speech of Shri Manaklal Kochatta was in any way objectionable. In fact this witness has not given the details of the alleged speech nor does he say anything about the second meeting at Dhodhar. This witness, therefore, does not corroborate the evidence of P.W. 6 Shri Rameshchandra Upadhyaya.

39. As stated earlier D.W. 7 Shri Manaklal Kochatta has, no doubt, categorically denied his presence in Dhodhar on that date and denied to have made any such speeches. However, the learned counsel for the petitioner submitted that D. W. 13 Shri Jhamaklal Khariwal has not said a word about his presence at Dhodhar meeting though P.W. 6 Shri Rameshchandra Upadhyaya and P.W. 7 Shri Bahadur Singh has stated about his presence. However, the petitioner has not put any question to the said witness Shri Jhamaklal Khariwal and therefore, it cannot be inferred that he was also present in the said meetings. Thus, it would appear from the evidence of these witnesses that D.W. 7 Shri Manaklal Kochatta gave no such objectionable speeches regarding the personal character and conduct of respondent No. 3 Shri Rampratap.

40. It may also be noted that there is no allegation about the presence of respondent No. 1 of respondent No. 13 at these meetings nor the Cmt. Ex. P-1 in the handwriting of the petitioner, except mentioning the names of the leaders Chandra Upadnyaya and Shri Bahadur Singh, mentions the reproduction of the alleged speeches referred to in the petition Cmt. Ex. P-4. In fact the Cmt. Ex. P-1 indicates that it was Shri Bahadur Singh (P.W. 7) who had referred to him the name of Shri Ramchandra Upadnyaya (D.W. 6).

41. That apart, respondent No. 3 Shri Rampatap Thanna who has denied all the allegations made about him and has opposed the petition, has not stepped into the witness box, who was in fact very concerned and like to be affected as a candidate by the said alleged false propaganda speeches casting a slur on his personal conduct and character. Therefore, I find that the petitioner has failed to prove that in the alleged meetings at Upari on 24th December, 1979 and on 26th December, 1979 at Dhodhar, D.W. 7 Shri Manakial Khatwani had made any such speeches regarding the personal conduct and character of respondent No. 3 Shri Rampatap Thanna as mentioned in the petition.

42. As regards publication of false statements of facts in relation to respondent No. 2 Shri Laxminarayan Pande, the petitioner (para 10, 14(1)) has stated that on 11th December, 1979 a public meeting was held at 3 p.m. at Dhodhar Chowk opposite hospital by the Congress(I) party in which respondent No. 1 Shri Bhawarlal Nahata was present and with his consent Shri Ramchandra Shah (D.W. 9), the President of Janapad, Jaoria, made the objectionable speech referred to above. On this point the witnesses examined by the petitioner are P.W. 4 Dr. Vijayanand Vaidal, who is a private medical practitioner at Jaoria, has deposed that in the Lok Sabha elections held in 1980 he was a worker of the Janata Party for the Dhodhar area. After about 20 or 25 days of the declaration of the result of the Mandasaur Parliamentary seat, the petitioner met him who was surveying about the activities of different parties during the election period, whereupon he told him that on the day the nomination papers of the candidates contesting the election was to be scrutinised,

Shri Bhawarlal Nahata came there along with Shri Jhamaklal Khariwal (D.W. 13) and Shri Bharat Singh (D.W. 15) and that he told the petitioner about the meetings arranged by Congress(I) party opposite the Government Hospital and the speech delivered by Shri Ramchandra Shah (D.W. 9) wherein he had said that Janata Party is running the Government in Madhya Pradesh, that Dr. Laxminarayan Pande is very well acquainted with all the Ministers, that if he means and so chooses can see that the labourers and cultivators are paid their dues by the Sugar Mill Owners, but Dr. Pande has taken Rs. 2 lakhs from the mill owners, that he is playing in the hands of the mill owners and, therefore, he neither wants nor is he interested to do anything for these labourers and cultivators. He has further deposed that about the said speech he wrote the inland letter Ex. P-4 dated 23rd December, 1979 to Shri Sheonarayan Modi (P.W. 33) who has admitted to have received this letter. A reading of Ex. P-4 would indicate that by this letter it has been reported to Shri Sheonarayan Modi that workers of the Congress(I) Party, including Shri Jhamaklal Khariwal, Shri Ramchandra Shah and Shri Bharat Singh are making false propaganda against Dr. Laxminarayan Pande to the effect that Dr. Pande had accepted bribe from the sugar mill owners. However, in this letter or in the deposition the witness has not mentioned or quoted the exact words said to have been used by Shri Ramchandra Shah (P.W. 9) in his speech which has been ad-verbatim reproduced in the petition. Though this witness has also admitted the presence of many other persons at the said meeting and has also mentioned some of the names, still they have not been examined. Further though according to this witness this letter does not give the exact date of the alleged public meeting, it is not clear why such a letter was sent so late as on 23rd December, 1979 about a meeting which had taken place on 11th December, 1979. He has also admitted that between 11th December, 1979 and 3rd January, 1980 Dr. Laxminarayan Pande had been to Dhodhar and had met him also, but apart from the petitioner he did not talk regarding the said meeting even with Dr. Pande, against whose personal conduct and character allegations were made.

43. Even Dr. Laxminarayan Pande in his deposition has made a general statement (para 7) that during the said elec-

tion whenever and wherever he visited in his constituency he received several complaints from his workers regarding corrupt practices committed, but he has not specified any of them nor it appears from his statement that Dr. Vijayanand Vaidal had ever brought to his notice about the said alleged speech which he met him thereafter.

44. P.W. 33 Shri Sheonarayan Modi has admitted to have received this letter. The respondent No. 1 Shri Bhawarlal Nahata very vehemently urged that this letter Ex. P-4 is also a concocted and forged one as the said witness Shri Sheonarayan Modi has clearly admitted to have received the same on 26th December, 1979 (para 11) when the postal stamp mark of the receiving place mentions the date to be 29th December, 1979. The respondent No. 1, therefore, contended that in this situation it is unlikely that this letter sent through post would have been received by Shri Sheonarayan Modi on 26th December, 1979 about which he has made a note under his signature in portion marked A to A. The date mentioned by him about the receipt of the said letter is written in such a manner that the figure 'nine' can also be read as 'six'. However, it appears that the said letter was actually received by Shri Sheonarayan Modi on 29th December, 1979 and it is due to some mistake or confusion that he has admitted about the date of receipt of the said letter to be 26th December, 1979. But because of this slip the said letter cannot be said to be either fabricated or concocted one.

45. It is no doubt true that Shri Ramchandra Shah (D.W. 9) has denied to have made any such speech as according to him, though he belongs to the Congress(I) party, he was indisposed and confined to bed for about 15 to 20 days prior to the date of polling and, therefore, he could not go to village Dhodhar on 11th December, 1979 to make the alleged speech. He has also admitted that for the last two years he is the President of the Janapad at Jaoria. He has further admitted that he being a worker of the Congress(I) as also the President of the Janapad, the Congress(I) party wanted that they should make use of his influential position, but on account of his indisposition he did not go to village Dhodhar or make the speech. His explanation about indisposition does not appear to be convincing as according to him he was taking medicine from a person Shri Manoharlal, resident of Ringnod, who in fact is not a doctor, but a school teacher. This witness has further admitted that he came to know about the present election petition only when he received the summons. Prior to that he never made any enquiry, nor anyone met him including respondent No. 1 to verify from him about the allegations made against his alleged speech in the said petition. Therefore, this witness has also tried to show as if respondent No. 1 never contacted him after the said election petition or that he had any talk with him, which is rather difficult to believe (para 11). In fact respondent No. 1 in his written statement has nowhere stated about the illness and indisposition of D.W. 9 Shri Ramchandra Shah on the relevant day. Even then the respondent No. 1 having categorically denied his presence there and having given any consent to the said witness Shri Ramchandra Shah to make any such speech, the petitioner still has not been able to substantiate and prove this alleged speech.

46. As regards the speech made by Shri Jhamaklal Khariwal (D.W. 13) in the public corner meeting on 11th December, 1979 at Hariya Khedi near the Temple at 5 p.m. in the presence of and with the consent of respondent No. 1 Shri Bhawarlal Nahata [para 14(B)], the petitioner has examined only one witness Shri Narayandas (P.W. 5) who has deposed that probably on 12th December, 1979 a meeting was held by the Congress(I) party near the temple at Hariya Khedi at 5 p.m. in which respondent No. 1 Shri Bhawarlal Nahata and D.W. 7 Shri Manaklal Kochatta were also present along with Shri Jhamaklal Khariwal (D.W. 13) and the said Shri Jhamaklal Khariwal in his speech said that Dr. Laxminarayan Pande has been purchased by the mill owners who are throttling the neck of the labourers and cultivators and, therefore, they should not vote for him but vote for Congress(I). From this it cannot be inferred that it amounts to casting any slur on the personal character and conduct of respondent No. 2 Dr. Pande.

47. This witness Shri Narayandas (P.W. 5) is a Janata Party worker and even though he has admitted that during the election after the said alleged speech Dr. Laxminarayan Pande had met him, he did not disclose to him about the said meeting and the allegations made against him in the

speech given by Shri Jhamaklal Khariwal (D.W. 13). Therefore, no implicit reliance can be placed on such a witness in absence of any other evidence adduced by the petitioner to corroborate his testimony.

48. D.W. 13 Shri Jhamaklal Khariwal, has, no doubt, denied to have made any such speech though he has admitted to be the President of the Block Congress(I) at Jaora since 1978 and has further admitted that as a worker of the Congress(I) party during the said election he made election propaganda in favour of respondent No. 1 according to the instructions and directions of Shri Chaudhri Bhatt, who was the Chunav Sanchalak. He has also admitted that he is the President of the Jaora Krishi Upaj Mandi since 1979 and also knew that the Jaora sugar mill owners had not paid their dues to the cultivators. However, he has emphatically denied to have made any such speech regarding Dr. Laxminarayan Pande as alleged in the petition. However, this witness has also in paragraph Nos. 16, 17, 18 and 19 curiously enough stated that in connection with this election petition respondent No. 1 never met him nor talked to him nor verified from him about his alleged speech referred to in the said petition. This part of the statement of the said witness cannot be easily accepted and believed. However, as stated above, merely on the basis of the testimony of P.W. 5 Shri Narayandas, it cannot be held that the alleged speech has been proved by the petitioner.

49. As regards the public meeting held on 17th December, 1979 at 9 p.m., at Ghantaghar Chouraha, Jaora [para 14(C)] and the speech by Shri Manaklal Kochatta (D.W. 7) in the presence of and with the consent of respondent No. 1 Shri Bhawarlal Nahata, the petitioner has examined P.W. 39 Shri Prakash, an Advocate from Jaora, P.W. 40 Shri Kantilal Khariwal and P.W. 33 Shri Sheonarayan Modi who lodged the report Ex. P-16 dated 18th December, 1979 about the said meeting with the S.D.O. Police, Jaora.

50. P.W. 39 Shri Prakash Mehta has deposed that at the time of the Lok Sabha election held in January, 1980 he was a worker of the Janata Party and now a worker of the Bharatiya Janata Party. He has deposed that on 17th December, 1979 at about 9 or 9.15 p.m. he was present at the meeting arranged and held by Congress(I) party at Ghantaghar Chouraha, Jaora, and heard the speech of Shri Manaklal Kochatta (D.W. 7) who had said that Dr. Laxminarayan Pande being interested in Mandsaur and Railam does not want that the Alcoloid Factory should be established at Jaora. In his speech he further said that the labourers and cultivators have to recover lakhs of rupees from the owners of Jaora sugar mills from whom Dr. Pande has obtained Rs. 2 lakhs on the strength of which he is fighting the present election. In his speech he further said that Dr. Pande has been a member of the Legislative Assembly as also a Member of the Parliament for the last several years, but he has done nothing for this area and, therefore, people of Jaora shall never vote for such a person. According to this witness Shri Kantilal Khariwal (P.W. 40) was present with him at the meeting.

51. This witness has further stated that on hearing such type of speech he told Shri Kantilal Khariwal that such type of speech is likely to provoke the voters and we must intimate about this to our party officials. Accordingly both of them went to the party office where they narrated about the speech given by Shri Manaklal Kochatta to Shri Sheonarayan Modi. Further according to this witness respondent No. 1 Shri Bhawarlal Nahata was present at the meeting as he was sitting on the dias alongwith five or seven persons and after intimating the party officials the said witness went to his house.

52. This witness has further stated that apart from the said meeting of the Congress(I) party he did not attend any other election meeting conducted by that party or by any other party. He has further deposed that he used to maintain a diary in those days when he was doing propaganda for his party and whatever speeches were made by persons in the Congress(I) meetings he used to note them in his diary and accordingly his speech he has noted in his diary which was copied down by Shri Narendra Joshi (P.W. 47). But this witness did not produce the original diary as according to him he was not called upon to produce the same. This witness has further stated that Shri Shantilal Jain of Jaora, had

informed him about a meeting of the Jain community held at the residence of Shri Manaklal Khariwal at Jaora in the presence of Shri Bhawarlal Nahata and in the said meeting on the basis of caste an appeal was made to the Jain community to vote for respondent No. 1. However, he has admitted that this information supplied by Shri Shantilal Jain was not disclosed by him to Shri Narendra Joshi when he had come to enquire about the corrupt practices. He has also admitted that in the said meeting of the Congress(I) there was a gathering of about 500 people, which included, besides respondent No. 1, Shri Vijay Sengupta, Shri Jhamaklal Khariwal and one Dharamchand. He has also given out the names of some other persons who had listened the said speech, but those independent witnesses have not been examined. He has further admitted that he is the Secretary of the Bhartiya Janata Party at Jaora.

53. P.W. 40 Shri Kantilal Khariwal has deposed that on 17th December, 1979 he attended the meeting arranged by Congress(I) at Ghantaghar Chouraha, Jaora which commenced at 9 or 9.15 p.m. In the said meeting respondent No. 1, Shri Manaklal Kochatta, Shri Jhamaklal Khariwal and others were also present. In that meeting Manaklal Kochatta delivered a speech in which he has said that Dr. Pande has been a member of the Lok Sabha for the last 8 or 9 years, but had done nothing for the commercial activities at Jaora. Even he has not supported the case of the Alcoloid Factory being installed at Jaora. He further said that Dr. Pande is taking sides with the owners of the Jaora Sugar Mills, is not interested in protecting the interests of the agriculturists and cultivators and the main reason for this is that Dr. Pande has taken about 2½ lakhs of rupees from the owners of the Sugar Mills. He too has admitted that he is a worker of the Janata Party and immediately after hearing the said speech he went to the office of the Janata Party where he informed Shri Sheonarayan Modi (P.W. 33). He has also admitted that he belongs to the same party as that of Dr. Pande. He has also admitted that the petitioner's witnesses Shri Sarnoor & Shri Najju Panwala alias Nazir Mohammed are the members of the Janata Party. He has further admitted the presence of Shri Venkatlal Dhakad (P.W. 8) at the said meeting, but no questions have been put to Shri Venkatlal Dhakad about his presence in the said meeting.

54. P.W. 33 Shri Sheonarayan Modi, on this point has deposed that on the basis of the information received from Shri Prakash Mehta and Shri Kantilal Khariwal regarding this meeting he lodged the report P/16 to the S.D.O. Police Jaora on 17th December, 1979 which is written in his handwriting. This witness was a principal worker of the Janata Party at Jaora and being a responsible official of the said party was receiving complaints orally or in writing and in that capacity he lodged the report Ex. P-16.

55. Respondent No. 1 Shri Bhawarlal Nahata criticised the report Ex. P-16 on the ground that the same has not been proved by calling the original one. In my opinion the petitioner ought to have called the original of Ex. P-16 and proved it. Therefore, much reliance cannot be placed on this document Ex. P-16 even though it is a carbon copy. Even in the said report the specific words used by Shri Manaklal Kochatta have not at all been mentioned, but a general complaint has been made that in the presence of respondent No. 1 Shri Manaklal Kochatta has cast aspersions about the personal conduct and character of Dr. Laxminarayan Pande.

56. It is not in dispute that a meeting of the Congress(I) party was held on 17th December, 1979 at Ghantaghar Chouraha at about 9 p.m. in which Shri Prakashchandra Sethi (D.W. 18) was also present and had given a speech. The respondent No. 1 has denied his presence at the said meeting right from the beginning as according to him he reached that place very late at about 10.30 p.m. when Shri P. C. Sethi had virtually finished his speech and was about to leave for Indore and thereafter only he delivered his speech, though it is nowhere suggested that the said respondent No. 1 Shri Bhawarlal Nahata or Shri Prakashchandra Sethi in their speeches cast any aspersions or made any false statements regarding the personal character and conduct of Dr. Laxminarayan Pande. In fact, as stated above, even Dr. Laxminarayan Pande has not said a word that he was informed about the allegations made in this meeting by Shri Manaklal Kochatta.

57. However, the learned counsel for the petitioner contended that ordinarily the main speaker speaks at the end has especially when a prominent leader like Shri P. C. Sethi, who held high position like the Chief Minister of M.P. a Minister in the Central Cabinet had especially come for the propaganda meeting of respondent No. 1, it is unlikely that respondent No. 1 would not reach the place in time and would come and give his speech after the principal speaker, namely Shri P. C. Sethi had finished and left the place. Respondent No. 1 has given explanation about the same. According to him on that date earlier he had been to Singholi where Shri Sukhadia, former Chief Minister of Rajasthan was to address a meeting. He was with him up to 4 p.m. on that day and then when he was at Rattangarh D.W. 14 Shri Nawab Khan, a student, made to him certain complaint on the basis of which in the company of Shri Nawab Khan he went to the police station at Rattangarh where Shri Nawab Khan (D.W. 14) lodged the report Fx. D-7. According to respondent No. 1 from Rattangarh he went to Mandsaur at 9 or 9.30 p.m. the distance between Rattangarh and Mandsaur being 65 to 70 miles. Further according to him the distance between Mandsaur and Sitamau is 22 miles, that there is no direct route between Sitamau and Jaora and for going to Jaora from Sitamau one has to come back to Mandsaur, the distance between Mandsaur and Jaora being 32 miles and this is how he reached Jaora on 17th December, 1979 between 10.30 and 11 p.m. by which time Shri P. C. Sethi had already addressed the meeting and was about to leave and, therefore, he could not be present at that meeting and consequently it cannot be said that any such alleged speech was given by Shri Manaklal Kochatta in his presence and with his consent.

58. However, it is also interesting to note that even Shri Manaklal Kochatta (D.W. 7) though an important worker of the Congress(I) party has in paragraphs Nos. 50, 51, 52, 53 and 54 of his statement has flatly stated that he had no knowledge about the present election petition, no talk or meeting with respondent No. 1 nor respondent No. 1 tried to verify the facts regarding the alleged speeches made by him. This explanation of this witness also being unnatural is not appealing.

Therefore, in absence of the production of the diary by Shri Prakash Mehra (P.W. 39) and the copy thereof obtained by the petitioner, Narendra Joshi having not been got proved, coupled with the fact that even in Ex. P-16 the objectionable words of the speech are missing. I find that the petitioner has not satisfactorily proved the alleged speech also.

59. As regards the public meeting of the Congress(I) party held at Laduna on 20th December, 1979 at 8 p.m. in the Bazar Chowk [Para 14(D)] in which respondent No. 13 Shri Surendra Nahata, who has been examined as D.W. 16, is alleged to have addressed, the petitioner has examined P.W. 9 Shri Sheoraj Singh and P.W. 10 Shri Khemchand.

60. P.W. 9 Shri Sheoraj Singh has deposed that in the meeting held by the Congress(I) on 20th December, 1979 in Laduna at about 8 or 8.30 p.m. he was present. According to him respondent No. 13 Shri Surendra Nahata as also Parmeshwardas Taat Maharaj, Shri Narayansingh Guru, Shri Jagannath Rathod Teli etc., were sitting on the dias. In his presence respondent No. 13 Shri Surendra Nahata said that the Janata Party people do not know how to rule. Within a period of 2-1/2 years they have broken into pieces. They do not know how to run the administration, that when they cannot carry on with their party, how can they carry on the nation. Then he further said that Shri Rampratap Thanna, respondent No. 3 in order to divide and cut the votes of Raibut has put up Shri Khushal Singh as a candidate at the said election after paying him money, that Shri Khushal Singh had been to him to demand the money, which he refused. In the said meeting he further said that Dr. Pande after giving him an allurement of Rs. 5000 has won over Shri Khushal Singh, that though Dr. Pande had been a member of the Lok Sabha for the last 7 or 8 years, he has taken no interest in the work; that the Alcohol Factory has been taken away to Ratlam that Dr. Pandey is an outsider and, therefore, you all should vote for respondent No. 1. This witness has further deposed that after the said meeting he met Shri Khemchand (P.W. 10) who has a shoe shop and told him how these people are using the language in their speeches. This witness is a Sarpanch of village Bancha. He has also admitted that he is an active worker of the Janata Party and apart

from Shri Khemchand he was unable to give out the names of any other persons who were present at the said meeting.

61. P.W. 10 Shri Khemchand, who is resident of Sitamau, has deposed that on 20th December, 1979 while he was returning from Lahori to Sitamau he stopped on the way to hear the speeches in the meeting organised by the Congress(I) party at about 8 p.m. and he heard the speech of respondent No. 13 Shri Surendra Nahata. He has deposed that in that meeting he heard the speech of Shri Virendrasingh Nahata who said that Shri Khushal Singh has taken currency notes from Shri Rampratap Thanna. They had also come to us also, but we showed no inclination and thereafter Dr. Laxminarayan Pande has given him an assurance to pay Rs. 5000 for not contesting in his favour and when such a person can give allurement to other candidate how can you rely on him especially when he is an outsider, that during the Janata regime, on which party ticket he has been a member of the Parliament, there is no law and order and, therefore, you all should vote for his father. This witness has further admitted that after the declaration of the election results when the petitioner approached him and asked him as to whether they were intending to file any election petition or not, it is then he narrated to him about the speech made by Shri Virendra Singh Nahata. But this witness immediately corrected the name from Virendra Singh to Surendrasingh. This witness has also admitted that apart from the said meeting he did not attend any other election meeting.

62. D.W. 11 Omprakash Rajoria has categorically denied that he had been to Laduna on 20th December, 1979 along with Shri Surendra Nahata in connection with the election propaganda. Respondent No. 13 Shri Surendra Nahata as D.W. 16 of course has categorically denied to have given any such speech alleged against him.

63. However, the learned counsel for the petitioner contended that the respondent No. 13 is silent in his written statement about this meeting. In fact the said respondent has denied all these allegations and it is clear that both P.W. 9 Shri Sheoraj Singh and P.W. 10 Shri Khemchand are party workers of the Janata Party, were also present as the Counting Agents of Dr. Laxminarayan Pande at the said election and it seems that they are chance witnesses. Therefore, in my opinion the petitioner has failed to prove that any such objectionable speech was delivered by respondent No. 13 Shri Surendra Nahata.

Thus, after considering the whole evidence adduced by the parties regarding the alleged false statements made against the personal conduct and character of respondent No. 2 Dr. Laxminarayan Pande, I find that the evidence adduced by the petitioner is not convincing on which implicit reliance can be placed. Therefore, the charge of corrupt practice under S. 123(4) of the Act levelled against respondent No. 1 has not been satisfactorily proved for want of sufficient evidence.

64. Now we deal with the allegation of corrupt practice under S. 123(2) of the Act. According to the petitioner a meeting of the Jain community was held on 17th December, 1979 at 6 p.m. at the residence of Shri Nathulal Modi (not examined) at Sitamau in which the respondent No. 1 Shri Bhawarlal Nahata as also Shri P. C. Sethi (D.W. 18) are said to have made the objectionable speeches, as mentioned in para 15(A) of the petition, the witnesses to which examined by the petitioner are P.W. 18 Shri Bhawarlal, P.W. 19 Shri Chainsingh and P.W. 22 Shri Manilal.

65. P. W. 18 Shri Bhawarlal has deposed that on 17-12-79 a meeting of the Jain community was being held at the residence of Shri Nathulal Modi at about 6 p.m. This witness who was going to the bazar was met on the way by the people of his Samaj, whom he accompanied and went to the house of Shri Nathulal Modi, where amongst the persons present were the respondent No. 1 Shri Bhawarlal Nahata and D. W. 18 Shri P. C. Sethi. This meeting which was held inside the house was attended by about 35 people in which majority consisted of Jains and in the said meeting respondent No. 1 said that he is a Jain, has sought the blessings of revered Shri Nanalalji Maharaj through the intervention of Shri P. C. Sethi. Smt. Indirani has given him the ticket to contest the election and, therefore, you should vote for him. Thereafter according to this witness Shri P. C. Sethi (D. W. 18) in his speech said that in Madhya Pradesh Jain Samaj has always been at the top, we must see that our candidate who belongs to the Jain community must come

out successful. This is the farman of Maharaj Saheb and if you do not act and vote accordingly you will be cursed. He further said that when Shri Choudhuri can ask the Jats to vote for his community and also Shri Jagjiwanram can also solicit the votes of Harijans, you should also remember this and see that this candidate who belongs to the Jain community must win the election.

66. According to the said witness Shri Bhawarlal, the petitioner Shri Narendra Joshi (R. M. 47) met him 20 or 25 days after the declaration of the result of the said election and on being enquired by him he narrated to him about the said meeting. He has further admitted in cross-examination that after the said meeting Shri P. C. Sethi was to address another meeting in the bazar at 7 p.m. as was announced, but he has no knowledge about the same as according to him he does not know where Shri Sethi went after this Jain Samai meeting was over. It appears that this witness was not invited as such to the said meeting of the Jain community, but just casually learnt about it while going to the bazar and this is how he happened to be there and it seems he is chance witness.

67. P. W. 19 Shri Chainsingh, who is an agriculturist and resident of village titrod, has deposed that on 17-12-79 he had been to Sitamau at the place of Shri Nathulalji Modi with whom he had some work and there he found respondent No. 1 Shri Bhawarlal Nahata as also Shri P. C. Sethi (D.W. 18). Further according to this witness he also stood at the house of Shri Nathulal Modi and after respondent No. 1 and Shri P. C. Sethi were welcomed with garlands, respondent No. 1 Shri Bhawarlal Nahata in his speech said that he along with Shri Sethiji had come with this hope that as Nanalalji Maharaj Saheb had blessed him at whose instance he has filled up the form as a candidate for the said Lok Sabha election, you all belonging to the Jain community should help me and Shri P. C. Sethi has made great efforts for me as a Jain ingetting the ticket for the said election through Smt. Indiraji. Thereafter, according to this witness Shri P. C. Sethi (D. W. 18) in his speech said that it is the order of Shri Nanulalji Maharaj that as follows of the Jain religion you all must see that Bhawarlal Nahata wins this election. From this place an outsider has been elected so far. Therefore, you must vote for Shri Bhawarlal Nahata, that in Madhya Bharat as also in Madhya Pradesh it is the Jains who have ruled this province and being a Jain myself I call upon you to vote for him. When Shri Choudhuri Charan Singh can tell the Jats to vote on the basis of their caste and Shri Jagjiwanramji can also similarly ask the Harijans to vote on the basis of caste, we are also demanding votes from you as Jains. If you do not abide by this order of Shri Nanulalji Maharaj you will be cursed.

68. This witness Shri Chain singh has admitted in cross-examination that prior to the said meeting a meeting of Shri P. C. Sethi was already held earlier in the Birahimata Chowk. He has also admitted that he was a member of the Janata Party and he did not complain or raise any objection about the said speeches to any one else. He has also admitted that on the counting day he was present at the counting place as a counting agent on behalf of respondent No. 2 Dr. Laxminarayan Pande. He has also further admitted that amongst the 31 or 40 people who had collected at the said meeting at the house of Shri Nathulal Modi, some of them were Sumrs and some cobblers. This witness also appears to be a chance witness and it is somewhat peculiar that in a private meeting held at the residence of an individual, even persons other than Jain would have been easily allowed to attend and hear the speeches.

69. P. W. 22 Shri Manilal, a cloth merchant from Sitamau has in fact declined to state anything regarding the election propaganda made by political parties in the Lok Sabha election held in 1980 except that he belongs to the Jain community. This witness, therefore, is of no assistance to the petitioner though the learned counsel for the petitioner submitted that out of pressure and compulsion this witness has refused to state anything regarding the said meeting. However I see no force in this contention.

70. It is, no doubt, true that Shri Nathulal Modi has not been examined by the respondent No. 1, but D. W. 11 Shri Om Prakash Rajoria, who is also resident of Sitamau has deposed that on 17-12-79 an election propaganda meeting of the Congress (I) party was held in Birahimata Chowk

at Sitamau which was addressed by Shri P. C. Sethi (D. W. 18) at about 6.15 p.m. till about 7 p.m. and thereafter Shri Sethi went to Mandsaur. He has specifically stated that apart from the said meeting Shri P. C. Sethi addressed no other meeting at Sitamau nor he had been to the house of Shri Nathulalji Modi.

71. The respondent No. 1 Shri Bhawarlal Nahata as stated above, in his statement has already given out the details of timings in order to show that he was not present in Sitamau on 17-12-79. In support of that respondent No. 1 has examined D. W. 14 Nawab Khan a student from village Umar, who has deposed that two days prior to the lodging of the report Fx. D-7 dated 17-12-79 at police station Rattangarh, Shri Virendra Kumar Saklecha, who was then the Chief Minister of M. P. had been to Rattangarh and when he had refused to accept the Mangpatra at the place where Shri Saklecha was giving his speech and later also while going to the Dak Bungalow, where Shri Saklecha was staying, he was beaten by the police on the way due to which he received an injury to his hand resulting in fracture, that even then he did not lodge any report at the police station but it is only on 17-12-79 at about 4 p.m. when respondent No. 1 Shri Bhawarlal Nahata came to Rattangarh that in his company along with some other students they went to the police station to lodge the report Fx D-7. This witness has categorically admitted that even after this incident he attended the school on the next day, made no complaint, has not filled any criminal complaint nor he was able to prove from any medical evidence that he had in fact received any fracture as a result of the said alleged beating. Therefore, in my opinion, such reliance cannot be placed on the testimony of this witness.

72. That apart there are some interpolations in Ex. D-7 which also make it somewhat doubtful. It is apparent that this witness Nawab Khan has been examined to corroborate the statement of respondent No. 1 that at about 4.30 p.m. on that day he was in Rattangarh, which place he left only after 6 p.m. and, therefore, obviously could not remain present at Sitamau at 6 p.m. where he is said to have made the speech at the residence of Shri Nathulal Modi.

73. Shri P. C. Sethi (D. W. 18) has also categorically denied to have made any such speech and there appears no reason to doubt his testimony, though it was argued on behalf of the petitioner that this witness has admitted that Shri Charansingh and Shri Jagjiwanram have sought for votes of the people on the basis of their caste. But that by itself does not mean that he too had sought the votes of the Jains in a similar fashion.

74. As regards the allegation about the closed door meeting of the Jain community on 24-12-79 at 1.30 p.m. [para 15(B)] and also regarding the closed door meeting of the Jain community of Rampura on 24-12-79 at about 4 p.m. [para 15(c)] and that in both these meetings respondent No. 1 Shri Bhawarlal Nahata gave the speech as mentioned in the petition the learned counsel for the petitioner frankly conceded that so far as allegation of corrupt practice regarding these two meetings are concerned the petitioner has not led any evidence and, therefore, he did not make any submission regarding these alleged meetings and frankly conceded that it has to be taken as disproved as even P. W. 25 Shri Sheonarayan Rathor has not said a word about these alleged meetings. Therefore, the allegations said to have been made in these two meetings must be held to be disproved.

75. As regards the closed door meeting of the Jain community on 27-12-79 at about 9 p.m. at the residence of Shri Madanlal Karnawat, admittedly a relation of respondent No. 1, in Pinli Bazar, Jaora [para 15(D)] in which respondent No. 1 Shri Bhawarlal Nahata is said to have made objectionable speech, the petitioner has examined P. W. 32 Shri Shantilal Jain, P. W. 33 Shri Sheonarayan, P. W. 43 Rameshchandra and P. W. 39 Shri Prakash Mehra.

76. P.W. 32 Shri Shantilal Jain has deposed that five or six days before the date of voting of the Lok Sabha election held in January, 1980 a meeting of the Jain community was arranged at the residence of Shri Madanlal Karnawat, in which he was present. The meeting was held at about 8.30 or 9 p.m. At the residence of Shri Madanlal Karnawat about 75 people had collected and in that meeting Shri Madanlal

Kochatta (D. W. 7) as also the respondent No. 1 Shri Bhawarlal Nahata gave their speeches. D. W. 7 Shri Manaklal Kochatta said that these days castism is in prominence and we must get all the votes of the Jain community. Then after the respondent No. 1 Shri Bhawarlal Nahata in his address said that he has sought the blessings of Nanalaji Maharaj who has told that you will positively get the votes of the Jains. I have filled up my nomination form after seeking his blessings. Further according to this witness Shri Shantilal he had a talk about the same with Prakash Mehra (P. W. 39), who advised him to make a report at the police station and accordingly he lodged the report Ex. P-13 dated 28-12-79 in his own handwriting at the office of the S.D.O. Police, Jaora. According to this witness he does not remember the name of the person who is said to have actually received the said report at the office of the S. D. O. (P). He has further admitted that in the report Ex. P-13 he has not made any mention about the speech given by Shri Madanlal though he has further admitted that if he has written any such thing then it is all wrong because he did not hear the speech of Shri Madanlal. He has also admitted that at the said meeting nobody objected regarding such a speech. In fact further according to this witness when he went first to the Police station to lodge the report the same was refused by the Thanedar and thereafter only he made the report on the advice of Shri Prakash Mehra. He has also admitted that the place where the said meeting took place is not a big one though he was unable to state the approximate length and width of that room. This report Ex. P-13 which is a copy has not been proved by calling the original. That apart, the statement of this witness does not inspire confidence.

77. P. W. 33 Shri Sheonarayan has not in his statement referred to any such report like Ex. P-13 nor has he in his statement said about the fact that P. W. 32 Shri Shantilal ever made any such complaint to him, he being the principal worker of the Janata Party at Jaora.

78. P. W. 43 Shri Rameshchandra has deposed that on 27th December, 1979 at about 4.30 p.m. Dilip Kumar son of Madanlal met him at his house and informed him about the meeting of the Jain community arranged at the house of Madanlal that evening, that he obtained the signature of this witness on a paper, which was a general request to attend the same. Further according to this witness he went at the house of Shri Madanlal Karnawat at about 9 or 9.15 p.m. when about 25 people were present there. At that time respondent No. 1 Shri Bhawarlal Nahata in his presence while addressing the gathering said that the Congress (I) party has put me as their candidate for the Mandasaur Parliamentary seat. At the special request of Shri Sethiji, Smt. Indiraji has given me the ticket so that I could do something for the uplift of the Jain community; that I have sought the blessings of Nanalaji Maharaj, whose message you must have received by now; that as I am Jain you must also vote for me especially when Shri Jagjiwanram and Shri Charansingh can also seek votes on the basis of castism, why the Jain people should lag behind. My success will be your success and my defeat will be defeat of Nanalaji Maharaj who thereby will be disrespected and, therefore, I impeach you to vote for the Congress (I) Party.

79. This witness Rameshchandra is Oswal Jain. He has further stated that the petitioner Shri Narendra Joshi met him after 20 or 25 days after the results of the election were declared and he gave him this information orally. This witness as also P. W. 32 Shri Shantilal have admitted that there are different sects in the Jain community—Digambar and Svetambar. He has also mentioned the names of the persons who were present at the said meeting but none of those independent witnesses have been examined. He has further admitted that apart from Shri Shantilal Mehta (P. W. 32) he did not have any talk about the said speech with any one else to the effect that such type of speeches adversely affect in spreading castism. He has further admitted that prior to this meeting he had also heard Shri P. C. Sethi at the election meeting arranged by Congress (I) at the Ghantachar, but he has not said a word as to what was said by Shri P. C. Sethi in the said meeting.

80. P. W. 39 Shri Prakash Mehra has deposed that Shri Shantilal after the said meeting had met him and on the basis of which he advised him to lodge a report. However, he has categorically admitted that about the said meeting when the petitioner Shri Narendra Joshi met him he did not disclose to him about the same which appears to be somewhat surprising especially when this witness has admitted to have maintained a diary.

81. The respondent No. 1 of course has denied to have made any such speech or admitted his presence at the residence of Shri Madanlal Karnawat. D. W. 2 Shri Manakchand Bhandari, an Advocate from Jaora who knows respondent No. 1 as also Shri Madanlal Karnawat has categorically denied that any such meeting of the Jain community took place in his presence on 27-12-79 at the residence of Shri Karnawat. This witness has no doubt admitted that he had made election propaganda in the said election on behalf of respondent No. 1 Shri Bhawarlal Nahata in the capacity of an Advocate as respondent No. 1 is also an Advocate. He has also admitted that *quo motu* he visited several places making propaganda in favour of respondent No. 1. D. W. 3 Shri Kanhaiyalal, who is also an Advocate from Jaora has also specifically denied that in his presence any such meeting of the Jain Community was held at the residence of Shri Madanlal Karnawat on 27-12-79 in which the respondent No. 1 is also said to have been present and addressed the said meeting. He has admitted that he had filed an election petition against Dr. Pande who had then succeeded in the 1962 election against Dr. Katju. He has further admitted to have made election propaganda for the respondent No. 1 in a jeep which was arranged by the Congress (I) Party.

82. The learned counsel for the petitioner, however, contended that Shri Madanlal Karnawat having not been examined by respondent No. 1, who happens to be his close relation, a presumption must be drawn that such a meeting must have taken place at his residence. However, the burden of proving corrupt practice being on the petitioner, it is for him to prove by satisfactory, cogent and convincing evidence that such a meeting did take place and that in the said meeting such type of objectionable speech was made.

83. As regards the meeting held on 17-12-79 at 10 p.m. at Hamalpora near Jumma Masjid, Jaora, to welcome respondent No. 1 Shri Bhawarlal Nahata and Shri P. C. Sethi (D.W. 18) in which the respondent No. 1 as also Shri P. C. Sethi are said to have made appeal on the basis of religion and by using their undue influence trying to threaten them with the curse of divine displeasure or spiritual censure, the petitioner has examined two witnesses P. W. 14 Shri Sabir Sarnoor and P. W. 15 Shri Nazir Mohammed.

84. P. W. 14 Shri Sabir Sarnoor, who is a motor mechanic has deposed that 10 or 15 days before the date of voting for the Lok Sabha elections held in January, 1980 he was as present at the meeting arranged by Congress (I) party in Mohalla Hamalpora near the Masjid at Jaora to welcome Shri P. C. Sethi (D. W. 18) and Shri Bhawarlal Nahata, respondent No. 1, in which several persons were present. According to this witness the first one to speak was respondent No. 1 himself who in his speech said that I have got the ticket due to the efforts made by Shri Sethiji who as offered prayer at Aimer Shareef, that you must strengthen the hands of Shri Sethiji by electing him, that Dr. Pande who belongs to R. S. S. and is an enemy of the Muslims has done nothing. Further according to this witness respondent No. 1 further said that you all very well know the importance of Panja (Ifand), which is known as Alike-Panja, which is very much respected by the Muslims as a religious symbol. Further according to this witness the next speaker Shri P. C. Sethi (D. W. 18) in his speech said that the Congress (I) party has always protected the interests of the Muslims, that Abdul Bukhari, who is the Imam of Jama Masjid Delhi has asked all of you to vote for Congress (I). He further said that you know what is the meaning of Panja and its importance and if this Panja becomes successful he would offer Chaddar at the Ajmer Shareef.

85. This witness P.M. 14 Sabir Sarnoor has further deposed that during the said election a pamphlet like Ex. P-5 was also distributed wherein it has been printed in Urdu that Shri Bhawarlal Nahata the Congress(I) candidate should be

made victorious, by affixing the seal of voting on the Ali-ka-Panja which is the election symbol of the said candidate. He has also stated that in the said pamphlet Ex. P-5 something is written in Arabic, which he could not read, but according to him publication of such type of parchas on the basis of religion hurts the feelings of the Muslims as it is not expected to make use of Ali-ka-Panja for such type of propaganda. This witness of course has admitted that Ex. P-5 does not indicate who had printed it, where it was printed as the name of the press is missing and who distributed the same. He has only said that when the petitioner met him he narrated to him about the speeches of respondent No. 1 Shri Bhawarlal Nahata and Shri Sethi (D.W. 18) and handed over the parcha Ex. P-5. He has admitted that he had contested the election of the Jaora Municipality as a Jansangh candidate. He has also admitted that this pamphlet Ex. P-5 was handed over by him to the petitioner 2-1/2 months after his first meeting with the petitioner after the results were declared. He has also admitted that during the said election he met respondent No. 2 Dr. Laxminarayan Pande but did not even mention to him about this pamphlet Ex. P-5 nor talk to him about the said meeting in which appeal on the basis of religion to the Muslim voters was made thereby using undue influence and resulting in divine displeasure in case the Muslim voters declined to honour the same by not affixing their vote for the Congress(I) candidate.

86. P.W. 15 Nazir Mohammed, who has a pan shop and is a resident of Jaora has also deposed that 10 or 12 days prior to 3-1-80, in the welcome programme arranged by the Congress(I) party for the respondent No. 1 and Shri Sethi (D.W. 18) has as present at the Masjid near Hemalpura and heard the speeches of both them. Respondent No. 1 in his speech said that the Raj of Janata Party is now over. The Janata Party which was a mixture of Jansangh and R.R.S. could not run the administration, that I have got the ticket due to Shri Sethi, that he has also Shri Sethi have vowed that in case they win the said election they would go to Ajmer Shareef and offer chaddar, that the Muslims must vote on the Panja (hand) which is Ali-ka-Panja. This witness has further deposed that regarding this meeting he lodged a report with the S.D.O. Police Jaora of which Ex. P-6 dated 18-12-79 is a carbon copy which he handed over to the petitioner Shri Narendra Joshi (P.W. 47) when he met him while trying to collect the necessary information. However, in this report also the exact words as reproduced in the petition have nowhere been mentioned, but a general type of allegation is made therein. According to this witness this welcome function was arranged by Mohammadji Panwala. He has further admitted that in the said meeting Hindus as well as Muslims were present, the total gathering being between 100 and 125. However, this complaint has not been proved by calling the original.

87. P.W. 10 Kantilal Khariwal has, however, admitted that Sarnoor and Najju alias Nazir Mohammed both are workers of Janata Party, though not a single question has been put to this witness about his Hamalpura meeting.

88. Respondent No. 1 Shri Bhawarlal Nahata and Shri Prakashchandra Sethi (D.W. 18) have no doubt denied about any such meeting at Hamalpura. They have also denied that they were present at any such meeting and gave the speeches as alleged by the petitioner and his witness examined on this point. D.W. 8 Shamsur Rehman alias Kallu Pathan has denied that any such reception meeting was arranged on behalf of Congress(I) party in the Lok Sabha election held in January 1980 and in his presence neither respondent No. 1 Shri Bhawarlal Nahata or Shri Prakashchandra Sethi gave any such speech. This witness has admitted that he was elected as a member of the Jaora Municipality which he contested on the congress ticket. This witness in para 10 of his statement has further admitted that he does not know the respondent No. 1 Shri Bhawarlal Nahata either by face or in any other manner. However, much reliance also cannot be placed on the testimony of this witness because in para 20 and 21 of his statement he has admitted that he did not even attend the meeting addressed by Shri P. C. Sethi on 17-12-79 at the Ghantaghar Chowk in Jaora and he has further admitted that he is denying about the said meeting at Hamalpura because he himself has no personal knowledge which clearly indicates that

his statement is based more on his imagination. It is also surprising that this witness has been examined by the respondent No. 1 especially when he does not know the respondent No. 1 who in his statement has also nowhere stated on what basis this witness was listed by him as his witness.

Therefore, I find that the petitioner has failed to prove that such a meeting was arranged at Hamalpura in which respondent No. 1 Shri Bhawarlal Nahata and Shri P. C. Sethi (D.W. 18) gave the objectionable speeches. There appears no reason to doubt the testimony of Shri P. C. Sethi (D.W. 18) who has been quite consistent in his statement so far as allegations regarding his alleged speeches have been shown in the petition. He could not be broken in his cross-examination and I find that his statement being quite natural is also reliable because it is unlikely that if Shri P. C. Sethi who is admittedly a very prominent and important personality from M.P. had really been present and addressed such meetings either of the house of Shri Nathulal Modi at Sitamau or at the Hamalpura Masjid meeting at Jaora, his programme would not have been known to every body including the patrakars and in these circumstances independent evidence could not be said to be wanting as even according to the petitioner such meetings were not secret meetings but open meetings where so many people had collected.

89. As regards the meeting held on 30-12-79 at 7 p.m. at Madarpura Chouraha, Madsaur in a welcome organised by the Muslims of the locality (para 15(F) in which D.W. 10 Shri Payaam Wasif, an Advocate and a Congress worker from Mandsaur is said to have made the objectionable speech in the presence of and with the consent of respondent No. 13 Shri Suendra Nahata, the petitioner has examined P.W. 11 Abdul Rehman and P.W. 12 Govindram.

90. P.W. 11 Abdul Rehman has deposed that in the Madarpura area of Mandsaur which is largely inhabited by Muslims a meeting on behalf of the Congress(I) party for the Muslims was arranged in which he was present at about 6.30 or 7 p.m. and after hearing the speech of Haji Rustam he left that place and after taking his meals at his relations house when he returned he heard the speech of D.W. 10 Payaam Wasif, who is the General Secretary of the Congress(I) party at Mandsaur. According to this witness Shri Payaam Wasif (D.W. 10) in his speech told that there are many candidates contesting this election, but the real fight is between Shri Nahata respondent No. 1 and Dr. Laxminarayan Pande, respondent No. 2, who is connected with R.S.S., that so far as respondent No. 1 is concerned he has always helped the Mohammadans wherever they have been in difficulties, has conducted their cases without charging any fees, whereas Dr. Laxminarayan Pande is against the Muslims and a staunch communal minded person against whom you should guard yourself, that Maulana Abdul Bukhari, who is Pash Imam at Jama Masjid Delhi has declared recently that after affixing your vote on the symbol of Hand you must see that the Congress of Smt. Indira Gandhi succeeds, that I, therefore, call upon you and remind you that his Panja is not as ordinary Panja, but it is Hazarat Ali's Panja, whose prestige and honour must be maintained by all the Muslims in discharge of their duties and, therefore, you must vote for respondent No. 1. Further according to this witness thereafter Shri Surendra Nahata, respondent No. 13 also addressed the gathering in which he said that due to certain reasons his father could not attend the said welcome function and I have sent by him in the capacity of the Chaunav Sanchalak and whatever has been said by Shri Payaam Sahab I fully endorse the same and request you to vote accordingly.

91. This witness, Abdul Rehman (P.W. 11) in para 8 has admitted that in the said election in the meeting arranged by Congress(I) party at Mandsaur in which Shri P. C. Sethi (D.W. 18) gave his speech at about 10 p.m. respondent No. 1 Shri Bhawarlal Nahata was not present at all. He has also admitted that on the counting day he was present at the counting hall as a Counting Agent of Shri Khushal Singh. He has also admitted that when the petitioner Shri Narendra Joshi met him he gave the necessary information to him which he noted down on a paper. However, he did not disclose the date of the alleged meeting.

92. P.W. 12 Govindram has deposed that five or six days before the date of polling an election meeting was held by the Congress(I) party in Madarpura Mohalla at about 6.30 or 7 p.m. in which he was present when he saw respondent No. 13 Shri Surendra Nahata and others sitting on the dias while Shri Payaam Wasif (D.W. 10) was giving his speech. According to this witness Shri Payaam Wasif said that Janata Party consist of communal and R.S.S. people who want to spread riots in the Country, whose candidate is Dr. Pande respondent No. 3 and against whom is respondent No. 1 Shri Bhawarlal Nahata, who is known to you all, that Janata Party during its regime of 2-1/2 years has done nothing and the symbol of Panja of the Congress(I) party is like Ali-ka-Panja which has a religious background and if you vote for this symbol the country would flourish, but if you vote for the other party riots would spread and this Country would be divided. Apparently this witness did not know the importance of Ali-ka-Panja on the basis of which it could be said that it was an appeal made to vote on the basis of caste or religion by using undue influence to incur the wrath of divine displeasure.

93. However, in cross-examination this witness Govindram (P.W. 12) has categorically admitted that he was an active worker of R.S.S. Jansangh and the Janata Party and that in the said meeting there were about 75 to 100 people. He has further stated that regarding this meeting he never met Dr. Laxminarayan Pande though he was made in-charge of the Mandsaur area for the purpose of election by Shri Rattanlalji Mukhiya, to whom also he did not give any information which is also somewhat surprising.

94. However, no questions have been put to respondent No. 13 Shri Surendra Nahata about this meeting and his speech as stated by Shri Abdul Rehman (P.W. 11). Besides even in the petition there is no such mention that Shri Surendra Nahata also gave a speech endorsing the views expressed by Shri Payaam Wasif (D.W. 10).

95. Shri Reman Wasif (D.W. 10) has deposed that in the Lok Sabha elections held in January, 1980 he was the General Secretary of the District Congress(I) party Mandsaur and was in-charge of Mandaur town and Sitamau Tehsil for doing the election propaganda, that he had attended the meeting addressed by Shri P. C. Sethi at Mandsaur which was conducted by him, but he did not attend or address any such meeting at Madarpura nor gave any such speech as alleged in the petition on 30-12-79. He has further deposed that Shri Surendra Nahata was not present with him at the alleged meeting. From his evidence his keen interest in the Congress(I) party is apparent as admittedly according to him the whole programme for the election propaganda at the said Parliamentary election was arranged by the District Congress(I) Mandsaur (para 12). He has also admitted that the meeting of Shri P. C. Sethi was arranged by the Congress Committee, whereas respondent No. 1 was himself arranging and fixing his election tour, which appears to be somewhat surprising in the context of things as have emerged in evidence especially when the respondent No. 1 had sought the backing and help of the workers of the Congress(I) party in the whole of the Mandsaur Constituency and that responsible office bearers of the Congress(I) party at different places holding important positions had also made propaganda speeches at different places requesting the voters to vote for respondent No. 1.

96. This witness Payaam Wasif (P.W. 10) has admitted that there is a separate Cell in the Congress(I) party for protecting the interest of the minority community (para 19). However, he has denied that it has been the prevalent practice of the Muslims of Madarpura to welcome the candidate who contests the election on behalf of the Congress party. When he was shown the pamphlet Ex. P-5 he has stated that the contents of this pamphlet would ordinarily annoy the Muslims because they relate to the religion party and would not in fact help respondent No. 1 in his election. But surprisingly enough this witness is para 30 has stated that the respondent No. 1 did not collect the necessary information from him regarding the alleged speeches about which mention is made in the petition and that he came to know of the filing of the said election petition only through the papers. This part of the statement in my opinion is difficult to accept as

it is unlikely and somewhat unnatural also that this witness and the respondent No. 1 would not have contacted each other to verify about the alleged averments in the petition. But as the witnesses examined by the petitioner on this point are chance witnesses, party workers and Counting Agents, I find that they cannot be implicitly relied upon as the petitioner P.W. 47 Shri Narendra Joshi has not produced the notes regarding the alleged speech.

97. As regards the meeting held at Malhargarh, on 1-1-80 at 12 noon in the presence of respondent No. 1 Shri Bhawarlal Nahata in which Shri Payaam Wasif (D.W. 10) is said to have made the objectionable speech (para 15(g)), the petitioner has examined P.W. 13 Madanlal, P.W. 23 Abdul Hamid and P.W. 24 Shri Mohammad Shafi.

98. P.W. 13 Shri Madanlal, who is resident of Malhargarh, has deposed that a day preceding the date of voting for the Lok Sabha elections held in January 1980, a meeting of the Congress(I) party was arranged at Gandhi Chowk, Malhargarh, at about 12 or 12.30 noon in which, apart from respondent No. 1 Shri Bhawarlal Nahata and D.W. 10 Shri Payaam Wasif, there were other persons also, which included Jagdish Vijayavargiya. According to this witness in the said meeting Shri Payaam Wasif (D.W. 10) said that I have come to request the Muslims of this area to affix their vote on the symbol of Panja, which is a Panja of Ali Hazrat respected by you all, that Smt. Indiraji in her dream saw Khawaja Nawab who told her that the Muslims of this Country are your supporters you will rule the Country once again provided you take this Panja as the election symbol, that Smt. Indiraji accepted this and on that basis only obtained Panja as the election symbol, that on this very basis Muslims have been given twenty per cent reservation and certain other facilities. Therefore, you all are requested to affix your seal on this Ali-ka-Panja and if you fail, you will be treated as kafir.

99. According to this witness Madanlal there were 100 to 150 people present in this meeting, which also included Shri Salim Khan. He has also admitted that in Malhargarh fifty per cent of the population is that of Muslims. He has further admitted that he was a worker of the Janata Party and that in the said meeting about 25 Hindus were also present, that police had also made the necessary arrangements. This witness has nowhere stated that the petitioner Shri Narendra Joshi (P.W. 47) ever met him or that he disclosed to him about the said speech. In fact even the petitioner in his affidavit filed in support of the petition has not mentioned the name of this witness through whom he got the information about the alleged speech.

100. P.W. 23 Shri Abdul Hamid, resident of Neenach, has not at all supported the petitioner on this point as he has simply deposed that 2 or 3 days before the date of voting he had been to Malhargarh at about 12 noon where in a big gathering he saw Shri Bhawarlal Nahata, respondent No. 1, but did not hear any speech of respondent No. 1 nor has he even made a mention of the fact that Shri Payaam Wasif was even present in that meeting or that he had addressed in the manner deposed to by Shri Madanlal (P.W. 13). This witness Shri Abdul Hamid, however, has admitted that on that date he had seen respondent No. 1 at the motor-stand, that when the petitioner met him after the said elections he did not give any such information to him regarding the alleged speech.

101. Similarly P.W. 24 Shri Mohammad Shafi who also a resident of Neenach Cantonment, also has not supported the petitioner on this point as in his statement he has only deposed that 2 or 3 days before the date of polling he had been to Malhargarh on personal work when at about 1.30 or 2 p.m. he saw respondent No. 1 contacting the voters personally. That apart he has not said a word about any such meeting. Therefore, this witness also does not support the petitioner in any way. As already stated above respondent No. 1 and Shri Payaam Wasif (D.W. 10) have categorically stated that no such speech was made by Shri Payaam Wasif and I see no reason to disbelieve them on this point.

102. As regards the meeting of Muslims held at the Masjid in Sitamau on 27-11-79 at 6.30 p.m. in which Shri Aziz Qureshi (D.W. 41) who is said to have made the objectionable speech in the presence of respondent No. 13

Shri Surendra Nahata (para 15-H) the petitioner has examined P W 16 Shri Rafiq and P W 17 Shri Bhashir Bhai. It may be noted that in the petition the name of the town Sitamau has not been mentioned but even then it appears that the respondent No 1 or respondent No 13 had no difficulty about the place as in their written statements they have denied regarding the said speech.

103 P W 16 Shri Rafiq has deposed that on 27-12-79 a meeting was arranged by the Muslims at the Masjid at about 5 or 6 p.m. in the evening in which he was present, that in the said meeting respondent No 13 Shri Surendra Nahata introduced Shri Aziz Qureshi (D W 4) who in his speech after referring to the riots at Aligarh and Jamshedpur said that how Muslims are being victimised and it is only the Congress(I) party which can protect the interest of the Muslims that these people who belong to RSS with kauchaadi are vitally interested in the massacre of Muslims and therefore, Smt Ghandhi who has obtained the election symbol of Hazrat Ali-ka-Panja must be voted accordingly. According to this witness after the said meeting he had a talk with Shri Nissar Hussain and Shri Bhashir Bhai. He has further admitted that he was as a worker of the Janata Party in 1977. He has also admitted that he did not note down the words spoken by Shri Aziz Qureshi in the said meeting. He too has nowhere referred that the petitioner ever contacted him about the said meeting.

104 Shri Bhashir Bhai (P W 17) has also deposed in a similar fashion to the effect that on 27-12-79 at 6 or 6.15 p.m. a meeting was arranged by the Muslims at the Masjid in which 30 or 35 persons were present which included respondent No 13 Shri Surendra Nahata as also Shri Aziz Qureshi (D W 4). After the introduction by Shri Surendra Nahata Shri Aziz Qureshi (D W 4) in his speech said that the Janata Party is dominated by RSS people who are always interested in seeing that the Muslims fight as would be clear from the riots at Aligarh and Jamshedpur in which many people have been killed and therefore, you must think well and vote for the Congress(I) and not any other party that you must remember that this election symbol 'Hand' is Ali-ka-Panja and if you do not affix your vote on this symbol you will be held guilty and incur the wrath of Allah.

105 This witness Shri Bhashir Bhai has further stated that 15 or 20 days thereafter Shri Rafiq Bhai met him and told him that the petitioner Shri Narendra Joshi is calling you whereupon he went to the shop of Shri Rafiq Bhai (P W 16) where he narrated to him about this meeting at the Masjid. However as stated earlier Shri Rafiq (P W 16) has not said a word to this effect. This witness has further said that the petitioner noted about the said speech on a piece of paper. Further according to this witness he was also present at the public meeting addressed by Shri P C Sethi on 17-12-79 at Sitamau at about 6 or 6.15 p.m. but he has not said anything as to what was said by Shri Sethi in that meeting nor does it appear from his statement that Shri P C Sethi had any other meeting either before the said public meeting or thereafter. He has further admitted that he had learnt about the said meeting at the Masjid in the Bazar and in fact he left the meeting half-way while Shri Aziz Qureshi was addressing the same as he felt offended when Shri Aziz Qureshi in his speech referred to Ali's name.

106 Shri Aziz Qureshi (D W 4) has denied about having gone to Sitamau on 27-12-79 or having addressed any such gathering of Muslims at the Masjid in the presence of respondent No 13 Shri Surendra Nahata. This witness who is an Advocate was an important office bearer of the Congress(I) party with his headquarters at Bhopal. He has stated that on 27-12-79 he was at Sehore though he has not produced any record which admittedly was maintained in the office of the Congress(I) party so far as his programme regarding his propaganda tour in connection with the said election was concerned. This witness too curiously enough in para 6 of his statement has deposed that after the said elections he formally met respondent No 1 at Delhi but he did not have any talk with him regarding the said election petition. He has further admitted that even though he remained present in this Court for about two days in connection with his statement as a witness he never met respondent No 1 nor enquired from him as to why he has been called as a witness. This conduct on the part of this witness also appears to be somewhat surprising and unnatural. He could

have very well produced the diary to prove that on 27-12-79 he was at Sitamau but at Sehore. He has also admitted in para 13, that respondent No 13 Shri Surendra Nahata is a worker of the Congress(I) party. This witness has, however, denied that according to Muslim religion the election symbol of Hand has absolutely concerned or connection with the religious symbol of Hand of Hazrat Ali-ka-Panja. He has also further admitted that to ask for votes in the name of Hazrat Ali-ka-Panja amounts to hurt the religious feelings of the Muslims and therefore, it is unlikely that in order to gain votes of the Muslims mentioning Ali-ka-Panja in the election propaganda meeting would in any way help the Congress(I) candidate.

In these circumstances I am not impressed with the testimony of P W 16 Shri Rafiq Bhai and P W 17 Shri Bhashir Bhai as their evidence does not appear to be convincing and corroborating each other, apart from the fact that what has been deposed to by them does not fully carry the same sense about the alleged speech referred to by the petitioner by quoting the exact words.

107 Now I deal with the petitioner's allegation regarding denial of the voting rights to the electors by the Polling Officers at various stations of the constituency. According to the petitioner (para 16(A) and (B)) on 3-1-1980 at polling centre No 63 Prathamik Shala Bhawan, Angari, in 316 Suvasara Vidhan Sabha constituency about 40 electors were collected at about 3 p.m. waiting for their turn to vote but the polling officer of the said polling station had closed the polling before 4 p.m. i.e. the scheduled time for the close of polling and on request by the polling Agents present there he turned out the Polling Agents except one Shri Joshi who was the Polling Agent of respondent No 1 and closed the polling station. Further according to the petitioner at the same polling station, on the polling day, between 12.30 p.m. and 2.30 p.m. polling was illegally stopped due to which about 100 voters returned back without casting their votes. However none of the voters who is said to have been denied the right of voting during these periods even though he was present has been examined by the petitioner nor he tried to find out the names of any such person.

108 The only witness examined by the petitioner on this point is P W 2 Nanalal Patidar who has deposed that in the Lok Sabha election held in January 1980 he was working as the Election Agent of respondent No 2 Dr. Laxminarayan Pande for the Suvasara constituency. On 3-1-80 which the polling day he received a complaint that the polling work at the Angari polling station was stopped by the Polling Officer of that polling station for about 2 1/2 hours. Therefore when he reached the polling station at about 3 or 3.30 in the afternoon a big gathering had collected there that the Polling Officer and the Congress representative Shri Joshi had closed the doors of the polling station and thus about 70 to 80 persons who had been waiting outside the polling station to cast their votes were denied that right. He has further stated that on the same day between 12 and 2.30 p.m. the polling officer had stopped the polling as they were busy in taking their meals which was the reason why such a large gathering had collected outside the polling station. Further according to this witness he therefore lodged his report Ex B 2 with the Zonal Officer the same day. However Ex B 20 is a carbon copy but the same has not been proved by calling the original and the contents thereof have also not been proved or corroborated by examining any other witness on the point who was thus deprived of his polling right.

109 This witness Nanalal Patidar (P W 2) has further stated that he had also lodged a report at Police Station Buvasara Ex P 1 on the same day complaining about the treatment meted out to the voters who had come there to vote. However Ex P 1 which is a carbon copy has not been proved by calling the original nor any witness has been examined to support or prove the averments made in the said report. This witness has further stated that on the same day a panchnama Ex P 3 was also prepared but the same has not been proved as none of the persons who are said to have prepared and signed the panchnama has been examined on behalf of the petitioner. Therefore I find that Ex P 1, Ex P 2 and Ex P 3 have not been proved as they have not been proved in absence of any evidence adduced by the petitioner and it is difficult to rely on the solitary testimony of P W 2 Nanalal Patidar who admittedly was also

the Counting Agent of Dr. Laxminarayan Pande. It also appeals that on the basis of these reports said to have been lodged no action was taken either by this witness or by Dr. Laxminarayan Pande. This witness has further admitted that even on the counting day he did not lodge any report with the Returning Officer regarding the conduct of the Presiding Officer of the Polling station Angari. Though according to this witness on the same day he had communicated by phone about this incident to Dr. Laxminarayan Pande respondent No. 2, he also kept quiet and did not take any action. If there was any substance in the said complaint he would not have kept quiet. I, therefore, find that these averments made by the petitioner about the incident at Angari polling station has not at all been established satisfactorily, though the learned counsel for the petitioner contended that the Presiding Officer at that Polling station ought to have been called by the respondent No. 1 or respondent No. 14 the Returning Officer. However, I am unable to agree with this submission because it was for the petitioner to prove these allegations.

110. As regards the allegations made in para 16(C) of the petition that on 3-1-1980 at polling station No. 17, Madhyamik Vidyalaya, Shamgarh, in 316 Suvasara Vidhan Sabha Constituency, ten female voters reached the polling station before 4 p.m. and were waiting for their turn to cast their vote, but the Polling Officer denied them the right to cast their vote, the learned counsel for the petitioner frankly conceded that there being no evidence adduced by the petitioner on this point he would not press the same and in absence of any evidence to that effect it has to be held that this allegation is not proved even though respondent No. 2 has deposed that he had lodged the complaint Ex. D-5 with the Polling Officer, Shamgarh.

111. Similarly regarding the allegations made in para 16(D) that on 3-1-1980 at Polling Station No. 71, Prathamik Shala Bhavan Manasa Khurd, in 319 Neemuch Vidhan Sabha Constituency when polling in favour of respondent No. 2 was going on some Congress workers by name Kaniram, Pappulal and Raising created disturbance at the polling station outside the polling booth thereby creating a tense atmosphere in the vicinity, as a result of which many voters could not cast their votes and had to return back coupled with the fact that polling at this station was postponed and stopped for about one hour—between 2.30 p.m. and 3.30 p.m. the learned counsel for the petitioner Shri V. S. Kokje also frankly conceded that the petitioner has failed to adduce any evidence on this point. According to the learned counsel even P. W. 13 Madanlal Rathod has not been of much assistance to the petitioner in proving this allegation as according to this witness on that day at the polling station respondent No. 1 Shri Bhawarlal Nahata was also present but the petitioner has not shown the presence of respondent No. 1 at the polling station.

112. Now we come to the allegations made by the petitioner in para 12(A to D) about the illegalities and the bungling committed at the counting hall on the counting day on 3-1-80. It is not in dispute that out of the two ballot boxes from the Chaplana polling station, the outer seal of one of the ballot boxes was found broken and not in tact due to which that ballot box was not opened at all as also the other ballot box with the result that the votes polled at that polling station could not be counted. This fact is not disputed by the respondents including the Returning Officer respondent No. 14.

113. D.W. 12 Shri Harishankar Pathak, respondent No. 14, who has been examined as a witness on behalf of respondent No. 1 has deposed that when this fact was brought to his notice regarding the seal of this Chaplana ballot box, he at first called the diary of the Presiding Officer of that Polling Station and also called him in the evening and thereafter contacted the Election Commission through the Chief Election Officer, Bhopal and on the basis of the direction of the Election Commission communicated to him through the Chief Election Officer, Madhya Pradesh, on phone those boxes were kept aside in the same condition as the Returning Officer has not placed any written record about the same though Shri Hari Shankar Pathak has admitted that in the diary maintained by him as Returning Officer whenever any complaint was received and that was disposed of by him or of such complaints regarding the ballot boxes, he used to make a note thereof in the diary.

114. This witness Shri Harishankar Pathak has further stated that according to the direction received from the Election Commission these two ballot boxes were kept aside and the votes polled at that polling station were not counted even when he declared the final results of the election. It may also be noted that there is no evidence and material on record to indicate the total number of ballot papers issued for this polling station and the number of votes actually polled.

115. As regards the allegation that though 673 votes were polled at polling station Malaheda, on opening the box only 623 votes were found inside the ballot box and thus 50 votes polled were found missing. It is not in dispute that in fact only 623 votes were found inside the said ballot box. Further it is not in dispute that according to the report sent by the Presiding Officer of that Polling Station the total number of votes polled at that polling station was 673, but according to respondent No. 1 in fact only 623 votes were polled, and the same number of votes were found from the ballot box when it was opened, but the mistake appears to be a clerical mistake. Even according to the written statement filed by respondent No. 14 the Returning Officer, due to clerical error the Presiding Officer of that polling station was also called upon to explain this discrepancy and the necessary summary enquiry was also immediately made by him on the spot in the presence of the candidates and their Election Agents as also the two observers sent by the Election Commission. However, unfortunately all that record has not at all been produced in this case in order to find out whether in fact it was a clerical mistake or 50 votes fell short on account of the tampering of the ballot boxes.

116. However, D.W. 12 Shri Harishankar Pathak in para 8 of his statement has deposed that so far as the complaint regarding this Malaheda polling station is concerned, no such written complaint was received by him, but the concerning Counting Supervisor informed him that the number of votes polled shown in the ballot paper account did not tally with the actual votes found from that ballot box when they were counted after opening the same. However, apart from this short statement regarding this mistake or bungling he has not said a word nor produced any relevant record in order to prove that in fact it was not a case of tampering but a case of clerical mistake. On the contrary respondent No. 1 has examined Shri Ransingh (D.W. 17) who at first deposed that he was the Polling Officer, but immediately changed that he was the Presiding Officer at the Malaheda polling station, in order to prove that from the office of the Returning Officer he was given 26 bundles of ballot papers, which contained 1180 ballot papers. This witness has deposed that the unused ballot papers were put by him in two separate sealed envelopes Art. A and Art. B and those articles along with the other papers including the ballot boxes were forwarded by him to the Returning Officer. He has also admitted that on both these envelopes which contained the unused ballot papers he has put up the brass seal. On opening the packet Art. A and on counting the unused ballot papers found therein he has deposed that the number of unused ballot papers in the said packet was 555 and on opening Art. B and on counting he has said that there were 2 unused ballot papers. Thus according to him out of 1180 ballot papers issued to him the total number of unused ballot papers came to 557 and if this is deduced then the balance comes to 623 which was the actual number of votes polled at that polling station.

117. This witness Shri Ransingh (D.W. 17) has further deposed that on the counting date he was called by the Returning Officer and he also explained in writing the discrepancy that had crept in on account of a clerical error but as stated above that record has not at all been produced nor the Returning Officer, against whom allegations of bungling have been made in the counting hall has cared to prove this mistake to be a clerical mistake by actually producing the record from which it could be proved that how many ballot papers and the series and their numbers were issued to the said Presiding Officer so that from the unused ballot papers found in the sealed packets of Arts. A and B it could be verified and tallied. In absence of any such evidence it is difficult to rely on the testimony of this witness who has even gone to the extent of saying that he did not see any difference in the seals affixed by him on the packets Arts. A and B when the difference was visible

to the naked eye when these articles produced through Shri Bhawarlal Bhatt (D.W. 5), Deputy Collector, Mandasau were opened in the open Court and even respondent No. 1 himself frankly admitted that the seals affixed were not the same, but different ones. That apart, the diary maintained by him in which all the entries regarding the ballot papers issued to him was made has also not been produced. It is also not clear what seal was actually given to him, though it is admitted that for each polling station the Returning Officer had issued different types of seals in order to identify the use of such a particular seal on the ballot boxes and papers issued to a particular polling station.

118. It also appears that the Presiding Officer has not carefully followed the procedure as provided in Rules 44, 45, 46 and 47 of the Conduct of Election Rules 1961 because the only evidence is his oral testimony which cannot be easily relied upon in absence of the documentary evidence which he was bound to maintain as required by these Rules. I am, therefore, not satisfied with his testimony as in para 37 he has further clearly admitted that he never tried to verify this fact whether in fact there was a clerical error or not. If all that documentary evidence as required by these Rules had been produced by the Returning Officer in this Court, perhaps some weight could be given to the testimony of this witness that in fact it was nothing but just a clerical error. However, there is nothing on record to indicate that the seal of the said ballot boxes was found in any way tampered with. Even respondent No. 2 Dr. Laxminarayan Pande who was present at the counting hall has in his statement nowhere stated that the seal of the said ballot box of the Malaheda Polling Station was found tampered with when it was opened for the purpose of counting the votes.

119. The next allegation of the petitioner is that out of the 10709 ballot papers rejected, about which there is no dispute, 4000 to 5000 ballot papers were completely in order and were polled in favour of respondent No. 2 Dr. Laxminarayan Pande. Thus, according to the petitioner if the said valid votes out of these rejected votes are added to the number of votes declared to have been polled by respondent No. 2, the result of election would have been changed. It is further alleged by the petitioner that the Returning Officer respondent No. 14 also failed to prepare the result sheet in Form No. 20 as contemplated under Rule 56(7) of the Conduct of Election Rules, 1961 due to which the respondent No. 2 could not apply for recounting of the votes as provided by Rule 63 of the said election Rules. Regarding these allegations of bungling and illegalities said to have been committed by the Returning Officer on the counting day, the petitioner obviously has no personal knowledge as he was not present in the counting hall, but in connection with these allegations he has examined P.W. 34 Shri Kailash Chawla, P.W. 38 Pradeep Pundit, P.W. 41 Rameshchandra Baser, P.W. 42 Radheyshyam and P.W. 46 Shri Basantlal, who were all present there as the Counting Agents of Dr. Laxminarayan Pande, respondent No. 2.

120. P.W. 34 Shri Kailash Chawla on this point has deposed that while as an A.R.O. he was taking a round on the tables where counting of votes was going on he was informed that certain votes which in fact are valid are being rejected as invalid and even though attention of the officials was invited they paid no heed and when even respondent No. 2 Dr. Laxminarayan Pande was similarly informed about the same he too told him that he was receiving similar complaints and if necessary he would look into this matter at the time of recounting. Thus, according to this witness about 400 to 500 votes which were in fact valid, were rejected. He has further deposed that the Returning Officer without making any declaration about the Chaplana polling boxes suddenly declared the results of the election and thus the opportunity for making an application for recount was lost. Further, according to this witness, after about 10 or 15 minutes a Clerk brought a proceeding for the signature of Dr. Laxminarayan Pande who refused to sign the same.

121. Further according to Shri Kailash Chawla (P.W. 34) when the petitioner met him he told him about all what had happened in the counting hall. This witness was an Advocate. He has also admitted that apart from Dr. Laxminarayan Pande there were several Counting Agents present on his behalf. He has further stated that out of the persons present in the hall, whose names he has men-

tioned, he could not say which person had made such a complaint. He has also admitted that he did not make any note in writing to indicate that at the counting of which polling centre such type of bungling had taken place. He has further stated that he himself did not lodge any complaint to the officials as he had informed the candidate Dr. Laxminarayan Pande himself. He has also admitted that after the counting of one round was over every time the Returning Officer on the loud-speaker used to declare the votes polled by the candidates, the votes rejected etc. and according to this witness only in Sitamau area about 400 to 500 votes which even though were valid were declared as invalid. As the witness was the Counting Agent (A.R.O.) for the Sitamau area of Dr. L. N. Pande he has no personal knowledge about the counting of the other constituency. Admittedly at the time of the said counting, the counting was divided into seven Vidhan Sabha constituency area. He has also admitted that he did not lodge any protest or report with the Returning Officer and that compliance of form No. 20 was not being completed after counting of every round was over which was announced on the mike. Thus it would appear that he did not lodge any written complaint about the said bungling or illegalities committed by the Returning Officer.

122. P.W. 38 Shri Pradeep Pundit, who is also an Advocate and who was present as the Counting Agent on behalf of Dr. Laxminarayan Pande for the Manasa Vidhan Sabha Kshetra has only deposed about the shortage of votes found from the ballot box of the Malaheda polling station. That apart he has not said a word about the other bungling. However, this witness has clearly admitted that every time after counting of votes in one round was completed, the announcement was being made regarding the votes which were rejected in that counting and a statement to that effect was also being prepared.

123. P.W. 41 Ramchandra Baser who was present as a Counting Agent on behalf of Dr. Laxminarayan Pande for the Manasa Vidhan Sabha constituency has on this point deposed that the ballot papers which were felt doubtful were taken to the table of the Assistant Returning Officer who used to reject them and even though he asked the Assistant Returning Officer to take such type of ballot papers to the Returning Officer himself, he ignored the same and even when Dr. Pande was informed about the same he told him that the same would be considered, if necessary at the time of recounting. He has also admitted that at first the doubtful ballot papers were sorted out, set apart, then taken to the Assistant Returning Officer and thereafter only he used to reject them, even though according to this witness he himself did not lodge any report or complaint or protest with the Returning Officer himself who was present on the spot. He has further no doubt stated that the Returning Officer used to make the announcement on the loud-speaker but sometimes due to the hue and cry he could not hear distinctly all what was being announced on the mike. He has also admitted that in all eight rounds of counting took place. He has also further admitted that he did not also make a complaint with the two representative sent by the Election Commission to supervise the counting who were also present on the dias.

124. P.W. 45 Shri Basantlal who was present as a Counting Agent for Dr. Laxminarayan Pande, has deposed that certain votes which were cast in favour of Dr. Laxminarayan Pande, whose election symbol was 'Haldhar' such votes instead of being counted as votes polled by Dr. Laxminarayan Pande, were in fact being kept in the bundle of votes polled by respondent No. 1 and were also counted as the votes polled by respondent No. 1 and thus according to this witness about 1500 votes were rejected. However, this has never been the case of the petitioner that votes validly polled by Dr. Laxminarayan Pande were treated and counted as votes validly polled by respondent No. 1 Sh. Bhawarlal Nahata. This witness has also admitted that at the relevant time he was a Member of the Vidhan Sabha from the Sitamau area and that after the results were declared by the Returning Officer, respondent No. 2 refused to sign the proceedings brought for his signature by an official of the Returning Officer. This witness has also admitted that except informing Dr. Laxminarayan Pande he did not lodge any other complaint. In fact he has denied that any written statement was prepared by the official giving details of the votes polled by each candidate and votes rejected though this witness has admitted that the Returning Officer after each round of counting was over he used to announce on the loud-speaker

the number of votes polled by each candidate in that round as into the number of votes rejected. Therefore, it is difficult to assume that all this was done without preparing the statement as required by Form No. 20.

125. So far as the petitioner himself is concerned, as stated above, he has no personal knowledge about the alleged corrupt practices or about the alleged bungling, hubbub and the illegalities committed at the counting hall resulting in chaos and disorder, a picture which he has tried to paint through these witnesses. In fact the petitioner Shri Narendra Joshi has admitted that respondent No. 2 Dr. Laxminarayan Pande did not give him any information regarding the alleged corrupt practices said to have been committed by respondent No. 1 which is somewhat surprising especially when this witness has admitted that Dr. Laxminarayan Pande, the candidate who was vitally affected only told him about the bungling that took place in the counting hall.

126. Dr. Laxminarayan Pande, respondent No. 2, who was present in the counting hall has on this point deposed that about 11,000 votes were declared invalid out of which many such votes were in fact valid votes and should not have been rejected. Further according to him the percentage of such rejected votes was about 40 per cent to 50 per cent. However, surprisingly enough this witness also did not lodge any report or protest in writing with the Returning Officer. On the contrary in cross-examination, on a question put by the counsel for the petitioner Shri V. S. Kokje, he has admitted in para 15 that he did not file the election petition himself as he lost all interest therein. This conduct on the part of respondent No. 2 Dr. Laxminarayan Pande appears to be somewhat unnatural and easily not reliable especially when this witness was positively sure that about 40 to 50 per cent of the votes rejected were definitely cast in his favour and that would have definitely turned the table in his favour especially when he was elected to the Parliamentary seat from the said Mandsaur Constituency in the last two general elections preceding the present election.

127. The respondent No. 2 has also admitted that in Mandsaur counting took place in seven rounds according to the area of the Vidhan Sabha constituency. He has also admitted (para 17) that when the counting of first round was over then an announcement was made on the loud speaker on behalf of the Returning Officer giving details of the valid votes polled by each candidate the votes rejected and the total number of votes counted in that round. Thus, according to him in nine rounds the counting was completed and this procedure was repeated every time. He has also admitted that on that day the counting continued till about 11.30 p.m. in the night and the result of the election was declared after past midnight. He has also admitted that even though he started receiving complaints to the effect that valid votes polled are being illegally rejected no sooner counting of the second round or third round was over, still he complained about the same orally and did not think it necessary to lodge a written complaint. He has also admitted that counting of seven rounds was completed about which announcement was made by the Returning Officer, he had also taken down notes thereof, but he has not produced any such notes. This fact further goes to prove that the Returning Officer was not just doing things orally and its has to be presumed, as deposed to by Shri Hari Shankar Pathak (D. 12) the Returning Officer that the procedure of filling up Form No. 20 was being followed in accordance with the Rules.

128. It is no doubt true that when the learned counsel for the respondent No. 14 Shri Surjeet Singh wanted to produce Form No. 20 as also the proceedings on which the signature of respondent No. 1 was obtained in his cross-examination, I rejected it on the ground that firstly such documents could not be produced in the cross-examination of respondent No. 1 especially has none of the witnesses of the petitioners on this point of bungling on the counting day have been cross-examined on behalf of their respondent No. 15 nor even respondent No. 2 Dr. Laxminarayan Pande who was vitally affected by the said results and has deposed about the said bungling confusion and illegalities was also cross-examined. The only reason assigned for not producing these documents earlier was on account of inadvertence, which, in my opinion, in the circumstances of the case was hardly a sufficient ground especially when allega-

tions regarding the events that happened on the counting day have been made against respondent No. 14. It is unfortunate that despite such allegations, in order to maintain the faith in the working of the election machinery, including the Returning Officer in this case, none of the Government Advocates who appeared on behalf of the said respondent No. 14 though it necessary to cross-examine the petitioner's witnesses as also respondent No. 2 on this point.

129. However, after carefully assessing the evidence adduced by the petitioner as also respondent No. 2. It would appear, that if at all there was any bungling it was only in relation to the ballot boxes of the Sitamau and Manasa constituency and there is no other evidence placed on record to indicate that similar illegalities were also found in the ballot papers counted from the other constituencies as admittedly for the said Mandsaur Parliamentary seat the Vidhan Sabha constituency included were eight in number, namely, Jaora, Mandsaur, Neemuch, Jawad, Garot, Savasara, Sitamau and Manasa out of which the ballot papers for the Jaora constituency were not counted at Mandsaur but admittedly at Ratlam. That apart, P.W. 38 Shri Pradeep Pundit has not said a word to the effect that votes cast were wrongly rejected by the Returning Officer. Besides, the witnesses examined by the petitioner on this point, P.W. 9 Shri Sheoraj Singh, who was present in the counting hall as Counting Agent on behalf of Dr. L. N. Pande for the Suvasara Vidhan Sabha Kshetra has not said a word to this effect. In fact in para 8 he has clearly admitted that he did not lodge any protest or report about the alleged illegalities being committed by the Returning Officer or the Assistant Returning Officers who were sorting the ballot papers putting them in separate bundles of the valid votes polled by each of the candidates as also in separate bundles of the ballot papers which were to be rejected after verifying and scrutinising the same in the presence of the Counting Agents.

130. Similarly P.W. 10 Shri Khemchand in para 9 of his statement in cross-examination has admitted that he was present in the counting hall on the counting day as a Counting Agent on behalf of respondent No. 2 Dr. Laxminarayan Pande for the Sitamau Vidhan Sabha Kshetra. He has further admitted that so far as the ballot papers of Sitamau area are concerned, he did not remember to have lodged any report to the effect that those votes were either being illegally rejected or that any votes validly cast in favour of respondent No. 2 were being counted as valid votes polled by respondent No. 1.

131. P. W. 1 Shri Abdul Rehman, who in para 9 of his statement in cross-examination has admitted that he too was present in the Counting hall on the counting day as a Counting Agent of Shri Khushal Singh respondent No. 6 for the Garot-Bhanpura area. He has stated that so far as the ballot papers which were counted in his presence he did not notice any such illegalities regarding the votes cast. Even P.W. 2 Shri Nanalal Patidar, in Paras 5 and 6 of his cross-examination has admitted that on the counting day he was sitting in the counting hall as a Counting agent on behalf of respondent No. 2 Dr. Laxminarayan Pande and that in his presence no such complaint was made to the Returning Officer regarding the alleged illegalities in the ballot papers. He has also admitted that before any ballot paper was rejected all such ballot papers were first brought to the table of the Supervisor for inspection and thereafter only they were rejected.

132. D.W. 12 Shri Harishankar Pathak, the Returning Officer, in his statement has clearly described the procedure that was adopted by him on the counting day, the manner in which ballot papers were sorted, counted and rejected and I see no reason to disbelieve his statement even though peculiarly enough he has been examined as a witness on behalf of respondent No. 1 but not in his capacity as respondent No. 14 though of course it makes no difference so far as the value and importance of his testimony is concerned.

133. The respondent No. 1 Shri Bhawarlal Nahata who has been cross-examined at length in details regarding the allegations made against him on all points, has categorically denied that any such illegalities in the counting hall were committed as alleged by the petitioner. In fact it is not in dispute, as deposed to by this witness, that Shri Devlal Rear counsel for respondent No. 8 who was appearing in this petition throughout had actually submitted an application

before the Returning Officer which subsequently he withdrew which clearly indicates that the petitioner was not given a true picture of the events or incidents that took place in the counting hall about which he has made averments in the petition.

134. It may also be noted that D.W. 7 Shri Manaklal Kochatta, who was present on the counting day at Ratlam as the Counting Agent on respondent No. 1 Shri Bhawarlal Nahata for the counting of votes cast in the Jaora Vidhan Sabha area has not been put any question about the alleged bungling in counting the votes of the ballot boxes for the Jaora Vidhan Sabha area.

135. However, the learned counsel for the petitioner contended that even though D.W. 10 Shri Payam Vasif in para 32 of his cross-examination has admitted that he was present at Mandsaur on the counting day in the counting hall as a Counting Agent of respondent No. 1 Shri Bhawarlal Nahata, he has not been put a single question in his examination-in-chief pertaining to the allegations made about the illegalities and bungling in counting. Similar criticism was levelled against D.W. 16 Shri Surendra Nahata, respondent No. 13, who was also present in the counting hall on the counting day at Mandsaur. However, in my opinion, as the burden of proving these allegations lay upon the petitioner, merely because no question have been put to them on this point does not necessarily mean that they have admitted the said allegations. In fact it was for the petitioner to pursue this point in their cross-examination, but no questions have been put to them on this point. Therefore, there is no question of drawing any inference against these two witnesses on this point in absence of any such material questions have been put to them.

After carefully considering and weighing the evidence I find that the petitioner has failed to prove this allegation of any illegalities or bungling in the counting hall at Mandsaur and in absence of any satisfactory, reliable and convincing evidence it is difficult to hold that out of the total rejected votes, about 4000 to 5000 votes were in fact validly cast in favour of respondent No. 2.

136. I may also mention here that before starting the evidence the petitioner had moved an application to the effect that in order to substantiate this plea all the bundle of votes be called for purpose of inspection and scrutiny in order to find out and verify whether there is really any force or substance in the allegation made by the petitioner on this point. However, at the time of evidence of the petitioner or even at the time of the cross-examination of respondent No. 1 Shri Bhawarlal Nahata or even when respondent No. 2 Dr. Pande was examined, the learned counsel for the petitioner, it appears, did not think it necessary to press that application when evidence was in progress in order to demonstrate how valid votes cast in favour of respondent No. 2 have been illegally rejected. Therefore, on the basis of the oral evidence and in absence of any other documentary evidence to that effect I find that the petitioner has failed to make out a case either for inspection of some such ballot papers or for recount of all the ballot papers.

137. Though the learned counsel for the petitioner did not seriously press the point regarding the allegations made in para 12(E), (F) and (G) of the petition to the effect that on the polling day respondent No. 1 Shri Bhawarlal Nahata during polling hours had been at a polling station at Juora in a jeep with banners of propaganda within the prohibited area of the polling station that on the polling day Shri Bharat Singh (D.W. 15) had been at the polling stations of Rola and Ringnod in jeep No. MPO-1926 and making propaganda within the prohibited area, as also the allegation that on the polling day at the polling station at Alled of Manasa, polling continued even after the prescribed time was over, I find that the evidence adduced by the petitioner of P.W. 29 Shri Sumatilal who has proved Ex. P-40 and Ex. P-10A, which are one and the same, has no substance as there is no evidence to the effect that as a result of the alleged acts it has materially affected the results of the elections. That apart, even though the petitioner has also filed certain reports, lodged at the police station by producing the said reports, the same have no bearing in absence of any other satisfactory evidence adduced to that effect. Therefore, I find that the allegations made in para 12(E), (F) and (G) of the petition stand disproved.

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138. Now I turn to the latest decisions which has considered the important previous decisions also, on the questions and points raised in this petition. So far as the question of standard of proof is concerned it has been held in AIR 1977 Supreme Court, 1 (Birbal Singh v. Kedar Nath) that—

"Interested witnesses are not necessarily false witnesses though the fact that the witness has a personal interest or stake in the matter must put the Court on its guard. The evidence of such witnesses must be subjected to a closer scrutiny and indeed the Court may in a given case be justified in rejecting that evidence unless it is corroborated from an independent source. But the reason for corroboration must arise out of the context and texture of evidence. Even interested witnesses may be interested in telling the truth to the Court and therefore the Court must assess the testimony of each important witness and indicate its reasons for accepting or rejecting it. A broad and general comment that a particular witness is an election agent of a candidate and cannot therefore be relied upon is not a judicial assessment of evidence. Evidence can be assessed only after a careful analysis."

139. In the decision reported in AIR 1978 Supreme Court, 1091 (Inder Singh v. State (Delhi Administration)) which related to a criminal matter, it has been held that—

"Credibility of testimony, oral circumstantial, depends considerably on a judicial evaluation of the totality, not isolated scrutiny. While it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that it should be perfect. If a case is proved too perfectly, it is argued that it is artificial; if a case has some flaws, inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rate innocent from being punished, many guilty men must be callously allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish and guilty men cannot get away with it because truth offers some infirmity when projected through human processes. Judicial quest for perfect proof often accounts for police presentation of fool-proof concoction. Why take up? Because the court asks for manufacture to make truth look true? No, we must be realistic."

140. In A.I.R. 1979 Supreme Court, 234 (K. M. Mani v. P. J. Antony) it has been held that the corrupt practice must be considered as a whole and not in isolation and not to disjoint it, or to tear a line here or a line there from the context.

141. In AIR 1977 Supreme Court, 208 (M. Narayana Rao v. G. Venkata Reddy) it has been held that—

"The following are the principles governing election disputes especially in regard to the charge of a commission of corrupt practice, to be kept in view by the Court:

- (1) That the charge of commission of corrupt practice has to be proved and established beyond doubt like a criminal charge or a quasi-criminal charge but not exactly in the manner of establishment of a guilt in a criminal prosecution giving the liberty to the accused to keep mum. The charge has to be proved on appraisal of the evidence adduced by both sides especially by the election petitioner.
- (2) That the election held and results declared on the choice of the voters should not be lightly interfered with or set aside by a court of law. After all, in the holding of a fresh election are involved numerous botherations, tremendous expenses, loss of public time and money and uncertainty of the public representation from a particular constituency.
- (3) A charge of corrupt practice is easy to level but difficult to prove. If it is sought to be proved only or mainly by oral evidence without there being contemporaneous documents to support it,

court should be very careful in scrutinizing the oral evidence and should not lightly accept it unless the evidence is credible, trustworthy, natural and showing beyond doubt the commission of corrupt practice, as alleged.

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- (4) It must always be borne in mind that the consequences of setting aside of an election on the ground of corrupt practice are very serious for the candidate concerned as well as others involved in it. A Court, therefore, should reach its conclusion with care and caution taking into consideration the board probabilities, the natural conduct of the persons involved and the special situation in which a corrupt practice is alleged to have been committed."

It has further been held in this decision that in the case of a candidate to who was a setting member belonging to the ruling party which was in power at the time of the election in question, it is difficult to accept or imagine that any police officer especially a person of the rank of the Deputy Superintendent of Police or the police in general would have gone against the petitioner and favoured and sided the petitioner with the opposite party, namely the successful candidate. On the face of it almost becomes an absurd story which could not be accepted.

142. Similarly in AIR 1971 Supreme Court, 267 (Boddepalli Najagopala Rao v. N. G. Ranga) it has been held that—

"A charge of corrupt practice under the Representation of the People Act must be established by clear and cogent evidence. When the Court of First Instance on a consideration of the evidence of the witnesses has refused to place any reliance upon their testimony, the burden lying upon the party setting up a plea of corrupt practice becomes no lighter in appeal. The charge cannot be held established merely upon suspicion, or preponderance of probabilities. Unless the appellant establishes that the appreciation of evidence was vitiated by gross misreading or misconception of the evidence or because of failure to consider important pieces of evidence which had a bearing on the charge or because of serious irregularities in procedure which amount to a denial of a fair trial the appellant Court will not proceed to reappraise the evidence on which the findings are recorded by the Court of First Instance on the credibility of witnesses."

It has further been held in the same decision that—

"To constitute corrupt practice under Section 123(4) one of the conditions required to be fulfilled is that the statement was published by the candidate or his election agent or by any other person with the consent of a candidate or his election agent. If the publication is by a person other than the candidate or his election agent, the consent of the candidate or his election agent must be established before the charge is held proved. Proof of express consent is not necessary; inference of such consent may be raised from the circumstances. Prior knowledge that it is likely to be published may raise an inference of consent, if the candidate deliberately keeps quiet and does not stop the publication if it be within his power. Where the offending matter has already been published and thereafter it comes to the knowledge of the candidate at the election and he does not take steps to renounce it, the consent may not necessarily be inferred unless the candidate or his election agent permits or aids in publication. In the matter of publication of statements which are false and are reasonably calculated to prejudice the prospects of the candidate's election, proof of consent not infrequently assumes great importance, for even if it be proved that the publication has been made, unless it is shown that it was with the consent of the candidate or his election agent, the corrupt practice may not be held to be committed so as to invalidate the election."

143. In AIR 1970 Supreme Court, 1477 (D. P. Mishra v. Kamal Narayan Sharma) it has been held that in an election petition a corrupt practice may be proved only by evidence beyond reasonable doubt. But in giving benefit of doubt the Court in reaching a judicial conclusion may not vacillate.

Similarly in the same Volume at page 1841 (Guruji Shrihari Baliram Jivatode v. Vithalrao) it has been held that it is a trite to say that the burden of proving every one of the ingredients of the corrupt practice alleged is on him who alleges it. If he fails to establish any one of them to the satisfaction of the Court he must fail.

As regards the allegations of corrupt practice regarding the statements relating to personal character and conduct, it has been held in this very decision that—

"Section 123(4) is designed to achieve the dual purpose of protecting freedom of speech and prevention of malicious attack on the personal character and conduct of rivals. A statement which reflects on the mental or moral character of a person is one relating to his personal character or conduct whereas any criticism of a person's political or public activities and policies, is outside it. Section 123(4) further requires that the candidate who made a false statement should have believed it to be false or did not believe it to be true and lastly it should be a statement reasonably calculated to prejudice the prospects of the election of the candidate against whom it was made. The word 'calculated' means designed; it denotes more than mere likelihood and imports a design to affect voters.

Every false allegation does not come within the mischief of S. 123(4). When any false allegation on fact pierce the politician and touches the person of the candidate then S. 123(4) is contravened.

The expression 'being a statement reasonably calculated to prejudice the prospects of that candidate's election' means that the publication of false statement of fact relating to the personal character or conduct must be such as would, in the estimation of the Court, having regard to the nature of the publication, the evidence tendered in Court and the surrounding circumstances have its natural and probable consequence of prejudicing the prospects of the candidate relating to whose personal character or conduct the publication has been made. So far as the last limb of section 123(4) is concerned, the emphasis is not so much on the intention of the publisher but on the probable effect on the election of the candidate against whom those statements are directed.

The mere criticism, true false or exaggerated of the role of the respondent as a politician is not necessarily covered by corrupt practice."

144. Similarly it has been held in AIR 1975 Supreme Court, 1748 (Ashok Duttchand v. Madhavlal Dube) that—

"Apart from the other requirements, it is of the essence of the matter that the impugned statement of fact in relation to the personal character or conduct of a candidate which is alleged to have been published should be false. Unless the said statement of fact is shown to be false, its publication would not constitute corrupt practice as defined in Section 123(4). When there is complete absence of any material on record to show that the impugned statement of fact is false, no occasion would plainly arise to come to a conclusion that such a corrupt practice has been established."

145. In the decision reported in AIR 1981 Supreme Court 8 (N. C. Zeliang v. Aju Newmal) it has been held that—

"A charge under S. 123 of the Act must be proved by clear and cogent evidence as a charge for a criminal offence. It is not open to the Court to hold that a charge of corrupt practice is proved merely on a preponderance of probabilities but it must be satisfied that there is evidence to prove the charge beyond a reasonable doubt. The electoral process in this country is an extremely expensive one and

by declaring the election of the candidate null and void, the entire process, so far as the candidate is concerned, is set at naught resulting in re-election. Such a course should be adopted only when the allegation on corrupt practice is proved conclusively."

This decision has relied on its earlier decision reported in AIR 1979 Supreme Court, 234 (supra), 145.

146. It has also been held in AIR 1980 Supreme Court 1347 (Sultan Saluddin Owasi v. Mohd. Osman Shaweed) that—

"Under the provisions of the Representation of the People Act, the onus lies entirely on the petitioner to prove the corrupt practices alleged against the elected candidate. The necessary facts and particulars and the statements of facts etc. are to be pleaded by the election petitioner with exactitude and precision. So far as the elected candidate is concerned, he is merely to rebut the allegations made by the petitioner in accordance with the provisions of the Civil Procedure Code, as far as practicable."

147. Similarly in the Supreme Court decision reported in 1973 JLI, 6 (Virendra Kumar Saklecha v. Jaggiwan) it has been held that—

"Section 83 of the Act requires an affidavit in the prescribed form in support of allegations of corrupt practice. Rule 94-A of the Conduct of Election Rules, 1961 requires an affidavit to be in Form No. 25. Form No. 25 requires the deponent to state which statements are true to knowledge and which statements are true to information. Under section 87 of the Act every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure to the trial of suits. Under S. 102 of the Code of the High Court may make rules regulating their own procedure and the procedure of the Civil Courts subject to their supervision and may by such rules vary, alter or add to any of the rules in the First Schedule to the Code."

Rule 9 of the Madhya Pradesh High Court Rules in respect of election petitions states that the rules of the High Court shall apply in so far as they are not inconsistent with the Representation of the People Act, 1951 or other rules, if any, made thereunder or of the Code of Civil Procedure in respect of all matters including inter alia affidavits. Rule 7 of the Madhya Pradesh High Court Rules states that every affidavit should clearly express how much is a statement and declaration from knowledge and how much is a statement made on information or belief and must also state the source or grounds of information or belief with sufficient particularity.

Form No. 25 of the Conduct of Election Rules requires the deponent of an affidavit to set out which statements are true to the knowledge of the deponent and which statements are true to his information. The source of information is required to be given under the provisions in accordance with Rule 7 of the Madhya Pradesh High Court Rules. In so far as Form No. 25 of the Conduct of Election Rules requires the deponent to state which statements are true to knowledge, there is no specific mention of the sources of information in the form. The grounds or sources of information are to be set out in the affidavit whether the Code applies or not."

148. As regards the allegations of corrupt practice under S. 123(2) and (3) of the said Act inducing a voter to vote or to refrain from voting on the ground of religion by making him believe that he will become or will be rendered an object of divine displeasure or spiritual censure, 'undue influence' herein means any act interfering with the free

choice of a candidate by the elector. 'Undue influence' is an interference or attempted interference with the free exercise of an electoral right defined under Section 79(d), viz., the right of a person to vote or to refrain from voting at an election. An interference either direct or indirect or an attempt to interfere with the free exercise of the right to vote or refrain from voting for a candidate comes within the mischief of sub-section (2). It is not necessary that the electorate must be illiterate or susceptible to be influenced by an appeal to religion. There is nothing in the language used in the section which has any reference to the literacy or the illiteracy of the electorate. Secondly the main part of the sub-section is not confined only to spiritual undue influence. The illiteracy or susceptibility of the electorate to spiritual undue influence is not a condition precedent for bringing an act within the purview of sub-section (2) of S. 123. This section is designed to ensure freedom of the elector to choose a candidate of his own choice. It is designed to prevent persons from deflecting the elector from enjoying that freedom by influencing him in an undue manner by creating an atmosphere or situation in which the choice of candidates will be made not on merits but on extraneous considerations—such that a selection would affect spiritually adversely if they cast their votes in favour or against a particular candidate.

In order that the sub-section may apply, the appeal must be to vote or refrain from voting for any person on the ground of his religion. The pronoun 'his' refers to the person in whose favour the vote is to be cast or not to be cast. In order to make an effective appeal an agent must necessarily appeal to the electorate to vote for or to refrain from voting for a candidate. He cannot ask the voters to vote for himself. If the Agent does so, he does not come within the mischief of the sub-section.

The term 'Agent' has not the same connotation as that term has in the Law of Contract. Under the Law of Contract the agency must arise out of a contract between the principal and the Agent and supported by consideration. The question to be noted is whether a person is or is not an agent of a candidate in the field of election.

149. Section 100(1)(d)(ii) says that the commission of a corrupt practice by the candidate's agent other than his election agent is a ground for setting aside the candidate's election provided such commission of corrupt practice by him has materially affected the result of the election in so far as it concerns the returned candidate. Here no question of consent to the commission of corrupt practice by the candidate or his election agent arises. The petitioner need prove only that the person who committed the corrupt practice is the candidate's agent and further that such commission of the corrupt practice has affected the result of the election in so far as the candidate is concerned. Read with Explan. (1) to S. 123 of the Act any person who is held to have acted with the consent of the candidate as his agent in connection with the election, that is to say, a person to whom the candidate has given consent, expressly or impliedly, to act as his agent in connection with the election, is the agent mentioned in this provision. Here the candidate is responsible to his acts vicariously not because the candidate has consented to the actual commission of any corrupt practice by him but he has been constituted the candidate's agent. Even if such an agent exceeds his authority the candidate is responsible for his agent's misdeeds provided the result of the election in so far as it concerns the candidate, has been materially affected thereby. It may further be noted that if it is found that the person concerned was merely an officious intermeddler in the election or a mere volunteer, then of course the candidate cannot be said to have any responsibility for his action even though the person may have acted for the candidate's benefit and with a view to advance his interest in the election. An association of persons or society or a political party or its permanent members who set up a candidate, sponsor his cause and work to promote his election may be aptly called the agent of the candidate for election purposes provided there is any such pleading and proof to that effect. In absence of any such solid proof, simply because workers of the political party to which respondent No. 1 belonged had made the election propaganda by itself will not hold the respondent No. 1 responsible for their acts in this case, in absence of any convincing evidence to that effect except that they worked for the party. Therefore, in the present case, as has also been held in the decision reported in AIR 1981 Kerala, 62 (P. R. Francis v. Raghavan

Puzhakadavil) I find that even the petitioner has failed to prove that the persons who are said to have made speeches during the election were in fact acting as agents of respondent No. 1 and with his consent at least at those alleged meetings in which respondent No. 1 was not present in person and as pointed out above as respondent No. 13 was appointed as the Election Agent of respondent No. 1 on 2nd January, 1980, the evidence of the petitioner that prior to that he too acted as an Agent for respondent No. 1 in the meetings where his absence has been shown being not clinching cannot be explicitly relied upon.

It has also been held in AIR 1974 SC, 47 (Sri Harasingh Chauran Mohanty v. Surendra Mohanty) if the petitioner relies on a corrupt practice committed by any agent other than the Election Agent, he must prove that it was committed by him with his consent or with the consent of his Election Agent. Consent however cannot be inferred from mere close friendship or other relationship or political affiliation. In this decision the Supreme Court has relied upon its earlier decision reported in AIR 1971 Supreme Court, 856 (D. P. Mishra v. Kamalnayan Sharma).

150. As pointed out above the Supreme Court in the various authorities, some of which are mentioned below, have specifically held that if the oral evidence was not supported by unimpeachable documents or other circumstances and was not reliable, then in such cases evidence in support of corrupt practice was neither sufficient nor convincing. [Please see AIR 1976 SC, 1886 (Kanhaiyalal v. Mannaal); AIR 1976 SC, 1599 (D. Venkata Reddy v. R. Sultan); AIR 1977 SC, 813 (Amolak Chand Chhazad v. Bhagwandas Arya) and AIR 1978 SC, 1162 (Ramanbhai Nagjibhai Patel v. Javantsingh Budhesing Dabhi)].

151. Even though the learned counsel for the petitioner relying on the decision reported in 1969 (AIR) SC, 734 (Manubhai Nandlal Amersey v. Popatlal Manilal Joshi) (para 8) contended that in order to prove the allegation of corrupt practice under S. 123(2), proviso (a), clause (ii), the actual effect of the speech is not material though this very authority further says that corrupt practice is committed if the speech is calculated to interfere with the free exercise of electoral right and to leave no choice to the electorates in the matter. I may also mention here that the learned counsel appearing for the parties, including respondent No. 1 who himself is an advocate, were unable to point out the distinction between divine displeasure or spiritual censure or the meaning of the latter term.

152. As regards the allegations regarding inspection of ballot papers or recounting of votes is concerned it has been held in AIR 1970 SC, 276 (Jitendra Bahadur Singh v. Krishna Behari) that—

"The basic requirements to be satisfied before an election tribunal can permit the inspection of ballot papers, are (1) that the petition for setting aside the election must contain an adequate statement of the material facts on which the petitioner relies, in support of his case and (2) the tribunal must be *prima facie* satisfied that in order to decide the dispute and to do complete justice between the parties, inspection of the ballot papers is necessary. The material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words they must be such facts as to afford a basis for the allegations made in the petition. If an election petitioner in his election petition gives some figures as to the rejection of valid votes and acceptance of invalid votes, the same must not be considered as an adequate statement of material facts when the petitioner has not disclosed in the petition the basis on which he arrived at those figures. His bald assertion that he got those figures from the counting agents of the unsuccessful candidate cannot afford the necessary basis.

Similarly as to the rejection of the votes polled in favour of the unsuccessful candidate, under the rules before a vote is rejected the agents of the candidates must be permitted to examine the concerned ballot paper. Therefore, it is quite easy for them to note down the serial number of the con-

cerned ballot papers. Therefore in the election petition is silent as to the inspection of the ballot papers or whether the counting agents had noted down the serial numbers of those ballot papers or whether those agents raised any objection relating to the validity of those ballot papers; if so who those agents are and what are the serial numbers of the ballot papers to which each one of the advanced their objections; the material facts required to be stated, are not satisfied and hence scrutiny of ballot papers should not be ordered."

In the present case admittedly the election agent of respondent No. 2 Dr. Laxminarayan Pande has not been examined nor the witnesses examined by the petitioner. In their statements have anywhere stated that before rejecting the votes they were not allowed to inspect the same or that they noted any such serial numbers of the ballot papers which according to them though rightly cast in favour of respondent No. 2 were illegally rejected as invalid or that valid votes cast in favour of respondent No. 2 were wrongly and illegally counted as valid votes polled by respondent No. 1 Shri Bhawarlal Nahata, though such is not the case of the petitioner.

153. In AIR 1973 SC, 215 (Smt. Sumitra Devi v. Shri Sheo Shanker Prasad Yadav) it has been held that—

"Whether allegations in the election petition are vague and the petition does not contain an adequate statement of the material facts and the evidence adduced by the petitioner is found unreliable and no definite particulars are also given in the application as to the illegalities alleged to have been committed in the counting of the ballot papers, the application for inspection of ballot papers cannot be allowed. A recount will not be granted as a matter of right but only on the basis of evidence of good grounds for believing that there has been a mistake in the counting. It has to be decided in each case whether a *prima facie* ground has been made out for ordering an inspection.

154. To the similar effects there are two more decisions reported in AIR 1975, 1863 (Bannali Das v. Rajendra Chandra Mardaraj Harichandan) and page 2117 (Bhabhi v. Sheo Govind), wherein it has been held that—

"Before the Court can order inspection of ballot papers, in an election petition the following conditions are imperative :

- (1) That it is important to maintain the secrecy of the ballot which is sacrosanct and should be allowed to be violated on frivolous, vague and indefinite allegations.
- (2) That before inspection is allowed, the allegations made against the elected candidate must be clear and specific and must be supported by adequate statements of material facts.
- (3) The Court must be *prima facie* satisfied on the materials produced before the Court regarding the truth of the allegations made for a recount.
- (4) That the court must come to the conclusion that in order to grant prayer for inspection it is necessary and imperative to do full justice between the parties.
- (5) That the discretion conferred on the Court should not be exercised in such a way so as to enable the applicant to indulge in roving inquiry with a view to fish materials for declaring election to be void; and
- (6) That on the special facts of a given case sample inspection may be ordered to lend further assurance to the *prima facie* satisfaction of the Court regarding the truth of the allegations made for a recount, and not for the purpose of fishing out materials.

If all these circumstances enter into the mind of the Judge and he is satisfied that these conditions are fulfilled in a given case, the exercise of the discretion would undoubtedly be proper."

155 In AIR 1980 SC, 206 (N. Narayanan v S Semmalei) it has been held that—

“The relief of recounting cannot be accepted merely on the possibility of there being an error. It is well settled that such allegations must not only be clearly made but also proved by cogent evidence. The fact the margin of votes by which the successful candidate was declared elected was very narrow, though undoubtedly an important factor to be considered, would not by itself vitiate the counting of votes or justify recounting by the Court.

The Court would be justified in ordering a recount of the ballot papers only where—

- (1) the election petition contains adequate statement of all the material facts on which the allegations of irregularity or illegality in counting are founded;
- (2) On the basis of evidence adduced such allegations are prima facie established, affording a good round for believing that there has been a mistake in counting; and
- (3) The court trying the petition is prima facie satisfied that the making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties.”

156 Similarly in AIR 1980 SC, 1362 (S. Raghbir Singh Gill v Gurcharan Singh Tohra) it has been held that recount cannot be ordered just for the asking. A petition for recount after inspection of the ballot papers must contain an adequate statement on material facts on which the petitioner relies in support of his case and secondly the Tribunal must be prima facie satisfied that in order to decide the dispute and to do justice between the parties an inspection of the ballot papers is necessary. The discretion conferred in this behalf should not be exercised in such a way as to enable the applicant to indulge in a roving inquiry with a view to fishing out materials for declaring the election void. Only on the special facts of a given case sample inspection may be ordered to lend further assurance to the prima facie satisfaction of the Court regarding the truth of the allegations made for the purpose of fishing out materials.

157. Thus, it would appear that if really the respondent No 2 on the counting day felt that such alleged illegalities as mentioned in the petition were being committed by the Returning Officer, he would have definitely submitted an application for recount of votes as contemplated under Rule 63 of the Conduct of Election Rules and the argument of the learned counsel for the petitioner that despite there being such a big gathering in the counting hall where hue and cry was being made, the provisions of Form No. 20 were not complied with and the results of the elections were declared in a surprising way to the astonishment of all concerned, cannot be easily accepted because in my opinion if it were a fact the respondent No. 2, Dr. Laxminarayan Pande, even after the declaration of the results of the election would have submitted such an application to place this fact on record, even though technically he could not have filed an application under Rule 64 of the said Rules for recount of votes. That would have been a relevant and material piece of conduct and evidence on the part of respondent No 2 and his Election Agent because this right of recount under Rule 63(6) is given to the candidates and their Election Agents present.

158 That apart, even though the allegation of the petitioner that from the ballot box of Nalabeda polling station fifty ballot papers, on opening the same, were found less than the number of voters shown to have exercised their right is found to be correct and even though as per advice of the Election Commission the counting of the ballot papers of the ballot boxes at the Chaplana polling station were not opened and counted as the outer seal on one of the boxes was found tampered with, still in my opinion, that itself is not a valid ground, in this case to order recount.

159 As a result of the aforesaid discussion I find that the petition must be and is hereby dismissed. The election of the returned candidate respondent No 1 Shri Bhawarlal

Nahata is upheld. However, considering the facts and circumstances of the case the parties are directed to bear their respective costs of this petition.

The Election Commission and the Speaker of the House of Parliament, New Delhi, be intimated about the substance of this decision and a copy thereof be also sent to the Election Commission in accordance with S 103 of the Representation of the People Act

[No 82/MP/2/80]

P. D. MULYE, Judge

25 1981

नई दिल्ली, 29 मई, 1981

आ० अ० 697—यस, निर्वाचन आयोग का समाधान हो गया है कि नवम्बर, 1980 में हुए गुजरात विधान सभा के लिए प्रत्यादिष्ट निर्वाचन के लिए 32-पोरबन्दर निर्वाचन क्षेत्र में चुनाव लड़ने वाले उम्मीदवार श्री केशवला रूपिबेन दुदाभाई, कुम्भारवाडा के निवासी वार्ड नं० 8, स्ट्रीट नं० 31, पोरबन्दर, जिला जूनागढ़ (गुजरात) लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्दीन बनाए गए नियमों द्वारा अपेक्षित प्रपत्रों के निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे हैं;

और यत, उक्त उम्मीदवार ने, सम्यक सूचना दिए जाने पर भी, इस असफलता के लिए कोई कारण अथवा स्पष्टीकरण नहीं दिया है और निर्वाचन आयोग का समाधान हो गया है कि उसके पास इन अतःकृतता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है,

अतः अब, उक्त अधिनियम की धारा 10 के अनुसरण में निर्वाचन आयोग एतद्वारा उक्त श्री केशवला रूपिबेन दुदाभाई को ससद् के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है।

[स० गुज-वि०स०/32/81(1)]

New Delhi, the 29th May, 1981

O.N 697.—Whereas the Election Commission is satisfied that Shrimati Keshvala Rupiben Dudabhai, New Kumbarwada, Ward No 8, Street No 31, Porbandar, District Junagadh (Gujarat), a contesting candidate for Countermanning of Poll to the Gujarat Legislative Assembly held in November, 1980 from 32-Porbandar constituency, has failed to lodge an account of her election expenses at all as required by the Representation of the People Act, 1951, and the Rules made thereunder,

And whereas the said candidate, even after due notice, has not given any reason or explanation for the failure and the Election Commission is satisfied that she has no good reason or justification for the failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Smt Keshvala Rupiben Dudabhai to be disqualified for being chosen as, and for being a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[No GJ-LA/32/81(1)]

आ०अ० 698—यत, निर्वाचन आयोग का समाधान हो गया है कि नवम्बर, 1980 में हुए गुजरात विधान सभा के प्रत्यादिष्ट निर्वाचन के लिए 32-पोरबन्दर निर्वाचन क्षेत्र से चुनाव लड़ने वाले उम्मीदवार श्री लखानी मोहनलालजी, भद्रकाली रोड, पोरबन्दर (गुजरात) लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्दीन बनाए गए नियमों द्वारा अपेक्षित प्रपत्रों के निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे हैं,

और यतः, उक्त उम्मीदवार ने, सम्यक सूचना दिए जाने पर भी, इस असफलता के लिए कोई कारण प्रथवा स्पष्टीकरण नहीं दिया है और निर्वाचन आयोग का समाधान हो गया है कि उसके पास इस असफलता के लिए कोई पर्याप्त कारण या व्यायोजित्य नहीं है;

अतः अब, उक्त अधिनियम की धारा 10-क के अनुसरण में निर्वाचन आयोग एतद्वारा उक्त श्री लखानी मोहनलालजी, को संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहिस्त घोषित करता है।

[सं. गुज-वि० सं०/32/81(2)]

O.N. 698.—Whereas the Election Commission is satisfied that Shri Lakhani Mohanlal Lalji, Bhadrakali Road, Porbandar, District Junagadh (Gujarat), a contesting candidate for Countermanding of Poll to the Gujarat Legislative Assembly held in November, 1980 from 32-Porbandar constituency, has failed to lodge an account of his election expenses at all as required by the Representation of the People Act, 1951, and the Rules made thereunder;

And whereas the said candidate, even after due notice, has not given any reason or explanation for the failure and the Election Commission is satisfied that he has no good reason or justification for the failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Lakhani Mohanlal Lalji to be disqualified for being chosen as, and for being a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[No. GJ-LA/32/81(2)]

आ० अ० 699—यतः, निर्वाचन आयोग का समाधान हो गया है कि नवम्बर, 1980 में हुए गुजरात विधान सभा के लिए प्रत्यादिष्ट निर्वाचन के लिए 32-पोरबन्दर निर्वाचन क्षेत्र से चुनाव लड़ने वाले उम्मीदवार श्री जवेज। बिक्रमसिंह वनुमा, 2, बायी प्लॉट, पोरबन्दर जि० जुनागढ़ (गुजरात) लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्दीन बनाए गए नियमों द्वारा अपेक्षित समय के अन्दर तथा रीति से अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे हैं;

और यतः, उक्त उम्मीदवार ने, सम्यक सूचना दिए जाने पर भी, इस असफलता के लिए कोई कारण प्रथवा स्पष्टीकरण नहीं दिया है और निर्वाचन आयोग का समाधान हो गया है कि उसके पास इस असफलता के लिए कोई पर्याप्त कारण या व्यायोजित्य नहीं है;

अतः अब, उक्त अधिनियम की धारा 10-क के अनुसरण में निर्वाचन आयोग एतद्वारा उक्त श्री जदेजा बिक्रम सिंह वनुमा को संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहिस्त घोषित करता है।

[सं. गुज-वि० सं०/32/81(3)]

O.N. 699.—Whereas the Election Commission is satisfied that Shri Jadeja Vikramsinh Danubha, 2, Wadi Plot, Porbandar, District Junagadh (Gujarat), a contesting candidate for Countermanding of Poll to the Gujarat Legislative Assembly held in November, 1980 from 32-Porbandar constituency, has failed to lodge an account of his election expenses within the time and in the manner as required by the Representation of the People Act, 1951, and the Rules made thereunder;

And whereas the said candidate, even after due notice, has not given any reason or explanation for the failure and the Election Commission is satisfied that he has no good reason or justification for the failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Jadeja Vikramsinh Danubha to be disqualified for being chosen as, and for being a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[No. GJ LA/32/81(3)]

नई दिल्ली, 30 मई, 1981

आ० अ० 700.—यतः, निर्वाचन आयोग का समाधान हो गया है कि मई, 1980 में हुए राजस्थान विधान सभा के लिए साधारण निर्वाचन के लिए 153—भीलवाड़ा निर्वाचन क्षेत्र से चुनाव लड़ने वाले उम्मीदवार श्री मूलचन्द कोली, कोली मोहल्ला, भीलवाड़ा, जिला भीलवाड़ा, (राजस्थान) लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्दीन बनाए गए नियमों द्वारा अपेक्षित अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे हैं;

और यतः, उक्त उम्मीदवार ने, सम्यक सूचना दिए जाने पर भी, इस असफलता के लिए कोई कारण प्रथवा स्पष्टीकरण नहीं दिया है और निर्वाचन आयोग का समाधान हो गया है कि उसके पास इस असफलता के लिए कोई पर्याप्त कारण या व्यायोजित्य नहीं है,

अतः अब, उक्त अधिनियम की धारा 10-क के अनुसरण में निर्वाचन आयोग एतद्वारा उक्त श्री मूलचन्द कोली, को संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहिस्त घोषित करता है।

[सं. राज-वि० सं०/153/80(82)]

New Delhi, the 30th May, 1981

O.N. 700.—Whereas the Election Commission is satisfied that Shri Moolchand Koli, Koli Mohalla, Bhilwara, District Bhilwara (Rajasthan), a contesting candidate for general election to the Rajasthan Legislative Assembly held in May, 1980 from 153-Bhilwara constituency, has failed to lodge an account of his election expenses as required by the Representation of the People Act, 1951, and the Rules made thereunder;

And whereas the said candidate, even after due notice, has not given any reason or explanation for the failure and the Election Commission is satisfied that he has no good reason or justification for the failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Moolchand Koli to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[No. RJ-LA/153/80(82)]

आ० अ० 701.—यतः, निर्वाचन आयोग का समाधान हो गया है कि मई, 1980 में हुए राजस्थान विधानसभा के लिए साधारण निर्वाचन के लिए 153—भीलवाड़ा निर्वाचन क्षेत्र से चुनाव लड़ने वाले उम्मीदवार श्री रमजान अली, भोमियों की गली, भीलवाड़ा, जिला भीलवाड़ा (राजस्थान) लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्दीन बनाए गए नियमों द्वारा अपेक्षित अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे हैं;

और यतः, उक्त उम्मीदवार ने, सम्यक सूचना दिए जाने पर भी, इस असफलता के लिए कोई कारण प्रथवा स्पष्टीकरण नहीं दिया है और

निर्वाचन आयोग का समाधान हो गया है कि उसके पास इस असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है;

अतः अब, उक्त अधिनियम की धारा 10-क के अनुसरण में निर्वाचन आयोग एतद्वारा उक्त श्री रामजान अली को संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आवेदन की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है।

[सं० राज-वि०सं०/153/80(83)]

O.N. 701.—Whereas the Election Commission is satisfied that Shri Ramjan Ali, Bhomion Kee Gali, Bhilwara, District Bhilwara (Rajasthan), a contesting candidate for general election to the Rajasthan Legislative Assembly held in May, 1980 from 153-Bhilwara constituency, has failed to lodge any account of his election expenses as required by the Representation of the People Act, 1951, and the Rules made thereunder;

And whereas the said candidate, even after due notice, has not given any reason or explanation for the failure and the Election Commission is satisfied that he has no good reason or justification for the failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Ramjan Ali to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[No. RJ-LA/153/80(83)]

आ० अ० 702.—यतः, निर्वाचन आयोग का समाधान हो गया है कि मई, 1980 में हुए राजस्थान विधान सभा के लिए साधारण निर्वाचन के लिए 153-भिलवाड़ा निर्वाचन क्षेत्र से चुनाव लड़ने वाले उम्मीदवार श्री लालूलाल, गुलमण्डी, भिलवाड़ा, जिला भिलवाड़ा (राजस्थान) लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्धीन बनाए गए नियमों द्वारा अपेक्षित अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे हैं;

और यतः, उक्त उम्मीदवार ने, सम्यक सूचना दिए जाने पर भी इस असफलता के लिए कोई कारण अथवा स्पष्टीकरण नहीं दिया है और निर्वाचन आयोग का समाधान हो गया है कि उसके पास इस असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है;

अतः अब, उक्त अधिनियम की धारा 10-क के अनुसरण में निर्वाचन आयोग एतद्वारा उक्त श्री लालूलाल को संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आवेदन की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है।

[सं० राज-वि०सं०/153/80(84)]

धर्म बीर, अवर सचिव

O.N. 702.—Whereas the Election Commission is satisfied that Shri Ladulal, Gulmandi, Bhilwara, District Bhilwara (Rajasthan), a contesting candidate for general election to the Rajasthan Legislative Assembly held in May, 1980 from 153-Bhilwara constituency, has failed to lodge any account of his election expenses as required by the Representation of the People Act, 1951, and the Rules made thereunder;

And whereas the said candidate, even after due notice, has not given any reason or explanation for the failure and the Election Commission is satisfied that he has no good reason or justification for the failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Ladulal to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[No. RJ-LA/153/80(84)]

DHARAM VIR, Under Secy.

नई दिल्ली, 4 जून, 1981

आ० अ० 703.—यतः, निर्वाचन आयोग का समाधान हो गया है कि मई, 1980 में हुए उत्तर प्रदेश विधान सभा के लिए साधारण निर्वाचन के लिए 89-शाहबाद निर्वाचन क्षेत्र से चुनाव लड़ने वाले उम्मीदवार श्री राम चरन, निजामपुर, पाली, जिला हरदोई, (उ०प्र०), लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्धीन बनाए गए नियमों द्वारा अपेक्षित अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे हैं;

और यतः, उक्त उम्मीदवार ने, सम्यक सूचना दिए जाने पर भी, इस असफलता के लिए कोई कारण अथवा स्पष्टीकरण नहीं दिया है और निर्वाचन आयोग का यह समाधान हो गया है कि उसके पास इस असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है;

अतः अब, उक्त अधिनियम की धारा 10-क के अनुसरण में निर्वाचन आयोग एतद्वारा उक्त श्री राम चरन को संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आवेदन की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है।

[सं० उ० प्र०-वि० सं०/89/80(244)]

ओ० ना० नागर, अधर सचिव,

भारत निर्वाचन आयोग।

New Delhi, the 4th June, 1981

O.N. 703.—Whereas the Election Commission is satisfied that Shri Ram Charan, Nijampur, Pali, District Hardoi (U.P.), a contesting candidate for general election to the Uttar Pradesh Legislative Assembly held in May, 1980 from 89-Shahabad constituency has failed to lodge an account of his election expenses at all as required by the Representation of the People Act, 1951, and the Rules made thereunder;

And whereas the said candidate, even after due notice, has not given any reason or explanation for the failure and the Election Commission is satisfied that he has no good reason or justification for the failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Ram Charan to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[No. UP-LA/89/80(244)]

O. N. NAGAR, Under Secy.

Election Commission of India

